

DENTISTS ACT 1989 No. 139

NEW SOUTH WALES



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DENTISTS ACT 1989 No. 139

NEW SOUTH WALES



Act No. 139, 1989

An Act to regulate the practice of dentistry and to repeal the Dentists Act 1934. [Assented to 25 October 1989]

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Dentists Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

- (2) Section 70 and Schedule 4 commence on the date of assent.

Definitions

3. (1) In this Act:

"**Board**" means the Dental Board constituted by this Act;

"**Committee**" means the Dental Care Assessment Committee constituted by this Act;

"**conduct**" means any act or omission;

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

"**dental treatment**" means the doing or performance of any act, matter or thing, the doing or performance of which forms part of the practice of dentistry;

"**dental technician**" has the same meaning as in section 5 (1) of the Dental Technicians Registration Act 1975;

"**dentist**" means a person registered, or taken to be registered, as a dentist under this Act;

"**Director-General**" means the Director-General of the Department of Health;

"**incorporated practice**" means a corporation that complies with section 53;

"**inspector**" means an inspector appointed under this Act;

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

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"President" means the President of the Board;

"public hospital" means:

- (a) a hospital or separate institution mentioned in the Second, Third or Fifth Schedule to the Public Hospitals Act 1929; or
- (b) a hospital under the control of an area health service constituted under the Area Health Services Act 1986;

"Register" means the Register referred to in section 12 (1);

"Registrar" means the Registrar appointed or taken to be appointed under this Act;

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

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

The practice of dentistry

4. For the purposes of this Act, **"the practice of dentistry"** includes:

- (a) the performance of any operation and the treatment of any diseases, deficiencies, deformities or lesions on or of the human teeth or jaws or associated structures; and
- (b) the correction of malpositions of the human teeth or jaws or associated structures; and
- (c) the performance of radiographic work in connection with the human teeth or jaws or associated structures; and
- (d) the administration of an anaesthetic agent in connection with any operation on the human teeth or jaws or associated structures; and
- (e) the mechanical construction or the renewal or repair of artificial dentures or restorative dental appliances; and
- (f) the performance of any operation on, or the giving of any treatment, advice or attendance to any person, as preparatory to, or for the purpose of or for or in connection with the fitting, insertion, fixing, constructing, repairing or renewing of artificial dentures or restorative dental appliances; and

- (g) the performance of any such operation and the giving of any such treatment, advice, or attendance as is usually performed or given by dentists.

Professional misconduct

5. (1) For the purposes of this Act, "professional misconduct", in relation to a dentist, includes the following:

- (a) any conduct that demonstrates a lack of adequate:
 - (i) knowledge;
 - (ii) experience;
 - (iii) skill;
 - (iv) judgment; or
 - (v) care,by the dentist in the practice of dentistry; and
- (b) the dentist's contravening (whether by act or omission) a provision of this Act or the regulations; and
- (c) practising dentistry contrary to a requirement made of, or condition imposed on, the dentist under section 15 (1) (e), 18 (1) or 21 (2); and
- (d) carrying on the practice of dentistry under a name other than the dentist's own name except:
 - (i) where the name is that of an incorporated practice of which the dentist is a director; or
 - (ii) while the dentist is acting as the duly appointed locum tenens of another dentist; and
- (e) allowing the use of his or her name in connection with the practice of dentistry at premises at which he or she, or a duly appointed locum tenens, is not in regular attendance for the purposes of practice and supervision during the hours in which the premises are open for the practice of dentistry; and
- (f) for fee, salary or other reward, being employed by or associating with, in carrying on the practice of dentistry, a person (within the meaning of subsection (4)) who is not a dentist; and
- (g) being an habitual drunkard or being addicted to any deleterious drug.

(2) For the purposes of subsection (1) (d) and (e), a person is a duly appointed locum tenens only if:

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- (a) the person is appointed in writing by a dentist;
- (b) the person is a dentist at the time of taking up his or her duties;
and
- (c) the person is employed only during the temporary absence of the person's employer and for a period not exceeding 3 months or for such further period as the Board may in any particular case permit.

(3) A dentist who is engaged in the practice of dentistry as a member of a partnership is, subject to subsection (2), entitled to appoint the dentist's partner or one of the dentist's partners as the dentist's locum tenens.

(4) For the purposes of subsection (1) (f), "**person**" includes a body or corporation, but does not include:

- (a) the Crown;
- (b) a public hospital or charitable or philanthropic institution;
- (c) a society registered under the Friendly Societies Act 1912;
- (d) a council within the meaning of the Local Government Act 1919;
- (e) an incorporated practice; or
- (f) any body or corporation which on application made for the purpose has been approved by the Board.

(5) The approval of the Board referred to in subsection (4) (f):

- (a) is not to be granted unless the Board is satisfied that the interests of the public generally or of any section of the public, other than dentists, warrant the granting of the approval;
- (b) may be granted subject to any terms and conditions the Board thinks fit to impose; and
- (c) may be revoked by the Board for any cause which it considers reasonable.

(6) A dentist carrying on a practice of dentistry as or for the legal personal representative of a deceased dentist who before death carried on that practice is not, by reason of carrying on that practice for a period not exceeding 12 months after the date of death of the deceased dentist or for such further period as the Minister may allow in writing in any particular case, guilty of professional misconduct pursuant to subsection (1) (d) or (f).

PART 2 - THE DENTAL BOARD

Constitution of the Dental Board

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

Functions of the Board

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

Membership of the Board

8. (1) The Board is to consist of 9 members.

(2) Of the members:

- (a) 5 are to be dentists elected in accordance with the regulations by dentists; and
- (b) 4 are to be appointed by the Governor and are to comprise:
 - (i) a person nominated by the Faculty of Dentistry at the University of Sydney;
 - (ii) a barrister or solicitor nominated by the Minister;
 - (iii) an officer of the Department of Health nominated by the Minister; and
 - (iv) a person nominated by the Minister as a representative of consumers.

(3) If the Faculty of Dentistry at the University of Sydney does not nominate a person within such time or in such manner as may be specified by the Minister by notice in writing to the Faculty, the Governor may instead appoint to be a member a person nominated by the Minister.

Committees

9. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Board.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings may be determined by the

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Board or (subject to any determination of the Board) by the committee.

Other provisions relating to the Board

10. Schedule 1 has effect with respect to the members and procedure of the Board.

PART 3 - THE REGISTRAR AND THE REGISTER

The Registrar and other staff

11. (1) The Board may appoint a person to be the Registrar for the purposes of this Act.

(2) The Board may employ such staff as may be necessary to enable the Board to exercise its functions.

(3) The Board may, with the concurrence of the Health Administration Corporation, fix the salaries, wages, allowances and conditions of employment of any such staff in so far as they are not fixed by or under another Act or law.

The Register

12. (1) The Registrar is required, in relation to each dentist, to enter in a Register, in the prescribed manner and on payment of the prescribed fee:

- (a) the full name and address of the dentist;
- (b) the date of registration;
- (c) particulars of the qualification or qualifications in respect of which the registration is granted;
- (d) particulars of such further or additional qualifications possessed by the dentist as the Board may direct to be entered in the Register;
- (e) particulars of any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description which the dentist is authorised by the Board to use in relationship to himself or herself as a dentist or the practice of dentistry by the dentist; and
- (f) such other particulars and matters as are directed by this Act or the regulations to be entered in the Register.

(2) The Registrar is required, on payment of the prescribed fee, to supply a person with such extracts from the Register as the person may require.

Annual roll fee

13. (1) Every dentist (other than a dentist registered for the time being in consequence of an application to be registered by virtue of section 20) is required, before the end of each year, to pay to the Registrar a roll fee for the following year.

(2) The roll fee is such amount as is determined by the Board and approved by the Minister.

(3) Together with the roll fee, the dentist is to furnish particulars of the dentist's address for entry in the Register.

(4) If any dentist required by subsection (1) to pay a prescribed roll fee does not pay the fee for the following year before 31 October in any year, the Board is required to notify the dentist that if the fee is not paid by the following 31 December the dentist's name will be removed from the Register.

(5) Notification may be given to the dentist by letter addressed to the dentist at the address appearing in the Register.

(6) If a dentist who has been so notified fails to pay the fee on or before the due date, the Board must remove the dentist's name from the Register.

(7) If the name of any dentist is removed from the Register under this section, the Board is required, on application in the prescribed form and if it is satisfied:

(a) that the dentist is of good character; and

(b) that the dentist is able to demonstrate that he or she possesses the requisite skills to practise dentistry,

to restore the dentist's name to the Register on payment of such fees as are prescribed by the regulations.

(8) The regulations may provide for the waiver of such part of the fees as the Board may in a particular case think proper.

(9) If the name of a dentist has been removed from the Register, and until the name has been restored to the Register, the dentist is to be taken to be a person not registered as a dentist under this Act.

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(10) In this section, "year" means a year ending on 31 December.

Removal of name of deceased dentist etc.

14. The Board shall ensure that the names of:

- (a) every deceased dentist;
- (b) every dentist who has ceased to possess or does not possess the qualifications in respect of which the dentist was registered; and
- (c) every person who has ceased to be a dentist, otherwise than by reason of a suspension of registration under any provision of this Act,

are removed from the Register.

PART 4 - REGISTRATION

Division 1 - Registration and licensing

Qualifications for registration

15. (1) A person who proves to the satisfaction of the Board that the person is of good character, is entitled to be registered as a dentist if:

- (a) the person is the holder of a degree in dentistry granted after due examination by the University of Sydney; or
- (b) the person:
 - (i) is the holder of any of the qualifications specified in Column 2 of Schedule 2 granted by or obtained from any university, college, body, association or institution specified opposite those qualifications in Column 1 of that Schedule; and
 - (ii) is or was by law entitled to be registered or to practise as a dentist in the state, territory, province or country where the qualification was granted or obtained; or
- (c) the person is or was by law entitled to be registered or to practise as a dentist in any State or Territory of the Commonwealth (other than New South Wales); or
- (d) the person is to be taken under section 17 to have a qualification that entitles the person to registration as a dentist; or
- (e) the Board is of the opinion that the person, having applied to be registered by virtue of section 20, may be registered (subject to conditions as referred to in section 20); or

- (f) the person is certified by the Board as possessing, in the opinion of the Board, sufficient skill in the practice of dentistry to be registered, by reason of having under a licence issued pursuant to section 18 (1) practised dentistry to the extent permitted by the licence:
 - (i) under the supervision of a dentist employed in the Department of Health or of a dentist in such other government department, public hospital, private hospital or other institution, as the Minister may have approved, for a period of or periods aggregating 3 years or more; or
 - (ii) in such part of the State or in the service of the Department of Health or in such other government department, public hospital, private hospital or other institution, as the Minister may have directed, for a period of or periods aggregating 3 years or more.
- (2) The Board may refuse to register the name of any person who is otherwise entitled to be registered but:
 - (a) who has been convicted in New South Wales of an offence; or
 - (b) who has been convicted elsewhere than in New South Wales in respect of an act or omission that would, if it had taken place in New South Wales, have constituted an offence; or
 - (c) whose name has been erased or removed from any register or roll established or kept under any law in any country providing for the registration or certification of dentists under a public authority; or
 - (d) who is an habitual drunkard or addicted to any deleterious drug.
- (3) The Board is not entitled to refuse to register the name of any person:
 - (a) on a ground specified in subsection (2) (a) or (b) when the act or omission in respect of which the person was convicted was not, from its trivial nature or from the circumstances under which it was committed, such as to render the person unfit in the public interest to practise his or her profession; or
 - (b) on the ground specified in subsection (2) (c) unless the reason for erasing or removal was an act or omission of a nature affecting the person's conduct in any professional respect for which, if done or omitted to be done in New South Wales, the

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Board would have been authorised under Part 6 to remove the person's name from the Register, if registered in the Register.

Amendment of Schedule 2

16. (1) The Governor may, by proclamation published in the Gazette, amend Schedule 2:

- (a) by inserting in Column 1 of that Schedule particulars of any university, college, body, association or institution, and in Column 2 of that Schedule, opposite those particulars, particulars of any qualification in dentistry granted by or obtained from any such university, college, body, association or institution; or
- (b) by omitting any particulars from that Schedule.

(2) A recommendation to the Governor for any amendment of Schedule 2 may not be made by the Minister except after consultation with or on the recommendation of the Board.

(3) A person who is registered as a dentist by virtue of the possession of a qualification appearing in Schedule 2 at the time the person is so registered continues, subject to this Act, to be registered under this Act notwithstanding that the qualification may be omitted from that Schedule after the date on which the person becomes so registered.

Further qualifications for registration

17. A person who does not have a qualification referred to in section 15 (1) (a), (b), (c), (e) or (f) is to be taken to have a qualification that entitles the person to registration as a dentist if the Board is satisfied that the person:

- (a) has passed through a regular graded course of dental study of 4 or more years duration conducted by a university, college, body, association or institution in a state, territory, province or country outside New South Wales; and
- (b) has received after due examination from that university, college, body, association or institution, and which is duly recognised for the purpose in that state, territory, province or country, a qualification certifying to the person's ability to practise dentistry; and
- (c) is or was by law entitled to be registered or to practise dentistry in that state, territory, province or country; and

- (d) by virtue of the person's qualifications and experience in the practice of dentistry, and having undertaken and passed the prescribed examinations or having been exempted from those examinations by resolution of the Board, is a suitable person to be registered.

Licensing to practise

18. (1) In the case of a person who is not otherwise entitled to be registered as a dentist but who the Board is satisfied is of good character and is able to meet the requirements of section 17 (a), (b) and (c) (but not section 17 (d)), the Board may, with the concurrence of the Minister, issue a licence to the person to practise:

- (a) under the supervision of a dentist employed in the Department of Health or of a dentist in such other government department, public hospital, private hospital or other institution, as the Minister may approve; or
- (b) in such part of the State or in the service of the Department of Health or in such other government department, public hospital, private hospital or other institution, as the Minister may direct.

(2) Section 15 (2) applies to the issue of a licence under this section in the same way as it applies to the registration of the name of any person.

(3) If a licence has been issued to any person under this section, and while the licence has effect, the person is to be taken (for purposes connected with or relating to the practice of dentistry to the extent permitted by the licence) to be registered under this Act.

(4) A licence issued under this section has effect for a period of 1 year, or such lesser period as may be specified in the licence, from date of issue.

(5) A licence may be renewed by the Board from time to time for a period not exceeding 12 months on the application of the person to whom the licence was issued.

Adequacy of language

19. A person is not entitled to be registered or licensed under this Act unless the person proves to the satisfaction of the Board that the person has a knowledge of the English language adequate for the

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conduct of the practice of dentistry, as a registered person or as the holder of a licence.

Division 2 - Conditional and provisional registration**Conditional registration**

20. (1) A person not otherwise entitled to be registered as a dentist but who:

- (a) the Board is satisfied is able to meet the requirements of section 17 (a), (b) and (c) (but not section 17 (d)); and
 - (b) has applied to be registered by virtue of this section,
- may be registered under section 15 subject to such conditions relating to the duration of the registration, the aspects of the practice of dentistry in which the person when registered may be engaged and any other matters, as the Board thinks fit.

(2) On registration of a person who has applied to be registered by virtue of this section, the conditions to which the registration is subject are to be noted in the Register.

(3) Nothing in this Act is to be construed as precluding a dentist, while registered by virtue of an application under this section, from applying for registration otherwise than by virtue of this section, and any refusal or failure by the Board to grant such an application is to be taken, for the purposes of Part 7, to be a refusal or failure to register the applicant's name in the Register.

(4) The Board may, if it thinks fit, waive or remit the whole or part of any fee for registration by virtue of this section.

Provisional registration

21. (1) When a person has applied to be registered, the Registrar, on being satisfied:

- (a) that the person is entitled to be registered under this Act; or
- (b) that the person:
 - (i) is justly entitled to a degree (granted after due examination) in dentistry of any university in the Commonwealth which is legally authorised to grant the degree;
 - (ii) will have the degree conferred in due course according to the practice of the university in question in conferring degrees; and

(iii) is of good character,
may, on behalf of the Board and on payment of the prescribed fee,
grant to the person a certificate of provisional registration in the
prescribed form.

(2) If a person has obtained a certificate of provisional registration,
the person is to be taken to be registered under this Act until:

- (a) the date stated in the certificate as the date on which the
certificate expires; or
- (b) such later date as is fixed by the Board, which in no case shall
be later than 3 months from the granting of the certificate.

(3) The Board may, at any time before the date so stated or fixed,
for such cause as to it seems proper, cancel a certificate of provisional
registration without prejudice to the application of the person who was
the holder of the certificate to be registered.

(4) On the cancellation of a certificate of provisional registration, the
holder of the certificate shall cease to be taken to be registered.

(5) If a person to whom a certificate of provisional registration has
been granted becomes registered under this Act during the currency of
the certificate, the person's registration dates from the granting of the
certificate, unless otherwise decided by the Board.

Division 3 - Miscellaneous

Refusal of registration on ground of unfitness

22. (1) Despite any other provision of this Act, if the Board is
satisfied on such evidence as to it seems proper that any applicant for
registration under this Act does not have sufficient physical or mental
capacity to practise dentistry, the Board may refuse to register the
applicant's name in the Register.

(2) For the purposes of this section, the Board:

- (a) may require an applicant for registration, by notice in writing
given personally or by post to the applicant, to undergo at the
Board's expense a medical examination:

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- (i) by a medical practitioner; and
- (ii) at any reasonable time and place,
specified in the notice; and
- (b) may hold such inquiry as the Board thinks fit.

(3) A failure or refusal by an applicant, without reasonable cause, to comply with a notice given under subsection (2) (a) may be regarded by the Board as evidence that the applicant does not have sufficient physical and mental capacity to practise dentistry.

Registration and licence fees

23. The fees for registration, the issue of a licence and the renewal of a licence are such amounts as are determined by the Board and approved by the Minister.

PART 5 - THE DENTAL CARE ASSESSMENT COMMITTEE

Constitution of the Dental Care Assessment Committee

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

Functions of the Committee

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

Membership of the Committee

26. (1) The Committee is to consist of 4 members appointed by the Minister.

(2) Of the members:

- (a) 1 is to be a dentist whose appointment is made following consultation with the Board and the Australian Dental Association, New South Wales Branch;
- (b) 2 are to be dentists appointed from a panel of names furnished to the Minister by the Australian Dental Association, New South Wales Branch; and
- (c) 1 is to be a person appointed by the Minister to be a representative of consumers.

(3) If the Australian Dental Association, New South Wales Branch does not furnish a panel of names within such time or in such manner as may be specified by the Minister by notice in writing to the Association, the Minister may instead appoint to be members, 2 dentists determined by the Minister.

Other provisions relating to the Committee

27. Schedule 3 has effect with respect to the members and the procedure of the Committee.

PART 6 - COMPLAINTS AND DISCIPLINARY PROCEEDINGS

Division 1 - Complaints

Application of Part to incorporated practices

28. (1) In this Part, a reference to a dentist includes a reference to an incorporated practice.

(2) If, under this Part, the Board finds that a complaint made against an incorporated practice is substantiated, the Board may take such disciplinary action as it thinks fit in accordance with section 47 against each director of the incorporated practice who is a dentist.

Application of Part to persons who have ceased to be registered as dentists

29. A complaint may be made against a person who was a dentist but who has ceased to be registered as a dentist and, for that purpose, a reference in this Part to a dentist includes a reference to a person who has ceased to be registered.

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Application of Part to persons licensed under s. 18

30. A power conferred under this Part to remove the name of a person from the Register or to suspend the registration of a person is, in the case of a person licensed under section 18, to be taken to be a power to revoke the person's licence or to suspend the person's registration.

Making of complaints relating to dentists

31. (1) A complaint may be made by any person that a dentist:

- (a) has been convicted in New South Wales of an offence;
- (b) has been convicted elsewhere than in New South Wales in respect of an act or omission that would, if it had taken place in New South Wales, have constituted an offence;
- (c) has advertised otherwise than in accordance with the regulations;
- (d) has charged an improper amount in relation to dental treatment;
- (e) has been guilty of professional misconduct;
- (f) does not have sufficient physical or mental capacity to practise dentistry; or
- (g) is not of good character.

(2) A complaint may be made to the Board.

(3) A complaint is required:

- (a) to be in writing;
- (b) to contain particulars of the allegations on which it is founded;
- (c) to be verified by statutory declaration; and
- (d) to be lodged with the Registrar.

Referral of mental health matters to Registrar

32. If a dentist becomes:

- (a) a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958;
- (b) a forensic patient within the meaning of the Mental Health Act 1983; or
- (c) a protected person within the meaning of the Protected Estates Act 1983,

the person prescribed by the regulations for the purposes of this section is required to cause notice of that fact to be forwarded to the Registrar in accordance with the regulations.

Procedure on receipt of complaint

33. (1) On receipt of a complaint, the Board may require the complainant to provide further particulars of the complaint and may make such preliminary inquiries concerning the complaint as it thinks fit.

(2) The Board may inform the dentist against whom the complaint is made of the nature of the complaint and invite the dentist to make, within such time as the Board specifies in the notice, such representations to the Board with respect to the complaint as the dentist thinks fit.

(3) The Board is required to consider any representations made to it within the time specified in its notice.

Determination by Board as to the manner in which a complaint is to be dealt with

34. The Board may decide at any time in relation to a complaint:

- (a) that it will deal with the complaint at a meeting of the Board; or
- (b) that, in accordance with Division 2, it will investigate the complaint or cause it to be investigated by a committee of the Board; or
- (c) that, in accordance with Division 3, it will refer the complaint to the Committee; or
- (d) that, in accordance with Division 4, it will conduct an inquiry into the complaint; or
- (e) that it will decline to deal with or will dismiss the complaint.

**Division 2 - Investigation of complaints by the Board
or a committee of the Board**

Investigation by the Board or a committee of the Board

35. (1) If the Board decides that it will investigate a complaint, it may investigate the complaint or cause it to be investigated by a committee of the Board.

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(2) A committee of the Board may not determine a complaint which the Board has caused it to investigate but may only make a recommendation to the Board as to the determination of the complaint by the Board.

(3) The Board may deal with any such recommendation as it thinks fit.

Conduct of investigation

36. In investigating a complaint, the Board or a committee of the Board:

- (a) may conduct the investigation in such manner as it thinks fit; and
- (b) may inform itself on any matter in such manner as it thinks fit; and
- (c) may receive written or oral submissions; and
- (d) is not required to conduct any proceedings in a formal manner; and
- (e) is not bound by rules of evidence.

No legal representation for parties appearing before the Board or a committee of the Board

37. A complainant and the dentist against whom the complaint is made are not entitled to be legally represented at any appearance before the Board or a committee of the Board in the course of an investigation under this Division.

Admissibility of Board's or committee's findings

38. A finding or recommendation of the Board or a committee of the Board is admissible as evidence in any legal proceedings.

Division 3 - Reference of complaints to the Committee

Complaints to be settled promptly if possible

39. (1) If a complaint is referred to the Committee, the Committee is required, in the first instance, to encourage the complainant and the dentist against whom the complaint is made to settle the complaint by consent.

(2) If no settlement by consent is reached within 28 days after the reference of the complaint, the Committee is to use its best endeavours to settle the complaint by consent within a further period of 2 months.

Furnishing of evidence and obtaining of advice

40. (1) The Committee may require such evidence to be furnished as it thinks necessary or desirable to enable it to exercise its functions and may fix a time within which the evidence is to be furnished.

(2) If a person neglects or refuses to furnish evidence within a time so fixed, the Committee may proceed in the absence of the evidence.

(3) The Committee may obtain such dental, medical, legal, financial or other advice as it thinks necessary or desirable to enable it to exercise its functions.

Matters to be considered in investigation of amounts charged

41. In investigating an amount charged for dental treatment, the Committee is to have regard to the following matters:

- (a) the time occupied in performing and the nature of the dental treatment rendered;
- (b) the distance between the consulting room or residence of the dentist and the place at which the dentist rendered the dental treatment;
- (c) the hours of the day or night at which the dental treatment was rendered;
- (d) the degree of skill, knowledge or experience required or given in rendering the dental treatment;
- (e) whether the dentist rendered the dental treatment in the capacity of specialist, consultant or dentist in ordinary practice;
- (f) what amount, if any, was paid by the dentist to any other person in respect of any dental prosthesis used in the dental treatment;
- (g) any other matter which appears relevant to the Committee.

Making of recommendation by the Committee

42. (1) The Committee may not determine a complaint referred to it by the Board (otherwise than by settlement by consent) but may only make a recommendation to the Board as to the determination of the complaint by the Board.

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(2) Following its investigation, the Committee may (whether or not it is able to effect settlement by consent of a complaint):

- (a) recommend a refund of money paid for the dental treatment in question;
- (b) recommend that the patient withhold payment of fees;
- (c) recommend the payment of dental fees, consequential to any remedial treatment;
- (d) recommend that the dental treatment is acceptable or that the fees are reasonable;
- (e) recommend that the patient pay the fee considered reasonable by the Committee;
- (f) recommend the practitioner be cautioned or reprimanded;
- (g) make such other recommendations as may be considered necessary.

(3) The Board may deal with any such recommendation as it thinks fit.

No legal representation for parties appearing before the Committee

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

Admissibility of Committee's findings

44. A finding or recommendation of the Committee is admissible as evidence in any legal proceedings.

Matters which the Committee may and may not investigate

45. (1) The Committee is not precluded from investigating an amount charged for dental treatment merely because the amount has been paid in whole or in part.

(2) The Committee has no power to investigate any medical or related treatment within the meaning of Division 3 of Part 3 of the Workers Compensation Act 1987, being treatment by a dentist or the provision of teeth, or any amount charged in connection with any such treatment.

Division 4 - Conducting of inquiries by the Board

Nature of and powers of the Board at an inquiry

46. (1) If the Board decides to conduct an inquiry into a complaint, the Board is to sit as in open court, and the person against whom the complaint is made is to be afforded an opportunity of defence either in person or by counsel.

(2) For the purpose of an inquiry, the Board and the President or member of the Board presiding at the inquiry has the powers conferred by the Royal Commissions Act 1923 on a commissioner and the chairman of a commission respectively appointed under Division 1 of Part 2 of that Act and that Act (section 13 and Division 2 of Part 2 excepted) applies to any witness summoned by or appearing before the Board in the same way as it applies to any witness summoned by or appearing before a commissioner.

Division 5 - Disciplinary action by the Board

Removal of name on account of misconduct etc.

47. (1) If a complaint against a person registered in the Register is found by the Board to be substantiated, the Board may do any one or more of the following:

- (a) caution or reprimand the person;
- (b) suspend the person's registration for such period as the Board thinks fit or remove the person's name from the Register;
- (c) except where the person has been convicted as referred to in section 31 (1) (a) or (b), impose on the person a fine not exceeding 50 penalty units;
- (d) take any other action the Board considers appropriate in the circumstances of the case.

(2) In the case of a conviction as referred to in section 31 (1) (a) or (b), no person shall have his or her name removed from the Register or have his or her registration suspended on account of the conviction if the act or omission in respect of which the person is so convicted does not, either from its trivial nature or from the circumstances under which it was committed, render the person unfit in the public interest to practise dentistry.

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(3) A fine imposed under this section may be recovered as a debt due to the Crown in any court of competent jurisdiction.

Written statements of decisions

48. (1) If the Board decides under section 47 to caution or reprimand a person, to suspend a person's registration or remove a person's name from the register or to impose a fine on a person, the Board is required, within one month of its decision, to provide the person, any person who made a complaint which resulted in the decision and such other persons as it considers appropriate, with a written statement of its decision.

(2) If the Board makes a decision in relation to a person under any provision of this Act, other than section 47, the person may request in writing that the Board provide the person with a written statement of the decision.

(3) Any such request shall be made within 60 days after the decision to which it relates.

(4) The Board is required to provide a written statement of the decision within one month of receipt of such a request.

(5) A written statement of a decision is required to:

- (a) set out any findings on material questions of fact;
- (b) refer to any evidence or other material on which the findings were based; and
- (c) give the reasons for the decision.

(6) Despite any other provision of this section, the Board is not required to include confidential information in any such statement, and if a statement would be false or misleading if it did not include the confidential information, the Board is not required to provide the statement.

(7) If, because of subsection (6), confidential information is not included in a written statement of a decision or such a statement is not provided to a person, the Board is required, within one month of a decision under section 47 or receipt of a request under subsection (2), to give notice in writing to the person to whom the Board is required (or would, but for subsection (6), be required) to provide the statement, indicating that:

- (a) the confidential information is not included; or
 - (b) the statement will not be provided,
- as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.

(8) In this section:

"confidential information" means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared;
- (b) relates to the personal or business affairs of a person, other than a person to whom the Board is required (or would, but for subsection (6), be required) to provide a written statement of a decision; and
- (c) is information:
 - (i) that was supplied in confidence;
 - (ii) the publication of which would reveal a trade secret;
 - (iii) that was provided in compliance with a duty imposed by an enactment; or
 - (iv) the provision of which by the Board would be in breach of any enactment.

(9) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

Effect of removal from Register or suspension

49. (1) Where the name of a dentist has been removed from the Register under any provision of this Act, the dentist is to be taken to be not registered as a dentist under this Act.

(2) Where the registration of a dentist has been suspended under any provision of this Act:

- (a) the Registrar is required to enter in the Register a memorandum of such suspension and of the date and cause of the suspension; and
- (b) the person is to be taken, during the period of such suspension, to be not registered as a dentist under this Act.

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Restoration of name to Register

50. (1) If the Board directs the removal from the Register of the name of a person, the name of the person is not to be again entered on the Register, except by direction of the Board or by order of a court of competent jurisdiction.

(2) The Board may, if it thinks fit in any case, direct the Registrar to restore to the Register any name removed from the Register and to do so without fee, or on payment of such fee, not exceeding the registration fee, as the Board may from time to time direct.

(3) The Registrar is required to restore the name in accordance with the Board's direction.

PART 7 - APPEALS

Grounds of appeal

51. A person aggrieved by:

- (a) a determination of the Board with respect to a complaint made against the person; or
- (b) the imposition, in connection with any such determination, of a fine or the amount of any fine so imposed; or
- (c) the removal of the person's name from the Register; or
- (d) the person's suspension from practice as a dentist; or
- (e) a refusal or failure by the Board to direct that the person's name be restored to the Register under section 50; or
- (f) any other refusal or failure to register the person's name in the Register,

may, within:

- (g) 3 months after the date on which notice is given to the person by the Board or Registrar of the determination, removal or suspension; or
- (h) 6 months after the date on which the person applied to have the person's name restored to or registered in the Register,

as the case may be, appeal against the determination, imposition, removal or suspension, or against the refusal or failure, as the case may be, to the District Court.

Making and determination of appeals

52. (1) Every appeal under this Part to the District Court shall be made in accordance with rules of Court and shall (except in the case of an appeal only against the imposition of a fine referred to in section 51 (b) or the amount of any such fine) be in the nature of a new hearing.

(2) On any such appeal, the District Court may summon witnesses, hear evidence, and determine the matter, having regard to this Act, the regulations, the circumstances of the case, and the public interest, and may make such order as it thinks fit.

(3) Without limiting the generality of subsection (2), on any such appeal the District Court may make any decision, recommendation or order which the Board might have made in the first instance.

(4) The decision of the District Court on any such appeal is final and binding on the Board and the appellant, and for the purposes of this Act is to be taken to be the final decision of the Board.

(5) If in any decision by the District Court under this section costs are awarded, the costs may be enforced and recovered in the same manner as costs awarded in a judgment of the District Court.

(6) The provisions of this section do not apply so as to enable an applicant for provisional registration or the holder of a certificate of provisional registration that has been cancelled to appeal against the refusal to grant a certificate of provisional registration or the cancellation of the certificate of provisional registration.

PART 8 - MISCELLANEOUS

Incorporated practices

53. (1) A dentist may carry on the practice of dentistry as a director or employee of a corporation if:

- (a) all the shareholders and directors of the corporation are either:
 - (i) dentists; or
 - (ii) family members of the dentist or dentists concerned; and
- (b) the controlling interest in the corporation is held by a person who is a dentist or persons who are dentists.

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(2) A person is a family member of a dentist if the person is the spouse, de facto partner (within the meaning of the De Facto Relationships Act 1984), parent, child, brother or sister of the dentist or is in a prescribed relationship with the dentist.

Civil liability of directors of incorporated practices

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

Use of certificates etc.

55. A dentist must not use any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description in relation to himself or herself as a dentist or the practice of dentistry other than those (if any) which the Board has authorised in pursuance of section 12 (1) (e) to be entered in connection with the dentist's name in the Register.

Unregistered person holding out to be dentist

56. (1) If any person, not being a dentist:

- (a) takes or uses the name or title of "dentist", "dental surgeon" or "surgeon dentist";
- (b) pretends, or by any means whatever advertises or holds himself or herself out to be a person who is willing or capable or entitled to do or perform any act, matter or thing, the doing or performance of which forms part of the practice of dentistry; or
- (c) takes or uses any name, initials, word, title, addition, symbol or description which, either alone or in conjunction with other words, implies or tends to the belief, or indicates, or is capable of being understood to indicate, or is calculated to lead persons to infer that:
 - (i) the person possesses a degree, diploma or other qualification in dentistry; or

- (ii) the person is registered under this Act as a dentist, or that the person is willing or capable or entitled to do or perform any act, matter or thing, the doing or performance of which forms part of the practice of dentistry,

the person is liable for each offence to a penalty not exceeding 20 penalty units.

(2) This section does not apply to a person who is:

- (a) a dental technician, whether or not the person is a dental prosthetist, in respect of the person's advertising or holding himself or herself out to be a person who is willing or capable or entitled to do or perform technical work or in respect of the person's doing any thing that the person is not prohibited by section 28 of the Dental Technicians Registration Act 1975 from doing; or
- (b) a dental prosthetist, in respect of the person's advertising or holding himself or herself out to be a person who is willing or capable or entitled to do any thing that forms part of the practice of dental prosthetics.

Practice of dentistry by unregistered person

57. (1) A person, other than a dentist, must not:

- (a) practise in dentistry; or
- (b) do or perform any act, matter or thing, the doing or performance of which forms part of the practice of dentistry.

(2) A person registered as a dentist by virtue of an application under section 20 must not, while so registered:

- (a) practise in dentistry; or
- (b) do or perform any act, matter or thing,

in contravention of any condition to which the person's registration is subject.

(3) Any person who acts in contravention of the provisions of this section is liable, in respect of each offence, to a penalty not exceeding 50 penalty units.

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- (4) Nothing in this section operates to prevent:
- (a) the practice of dentistry by a medical practitioner in the ordinary course of the medical practitioner's work as a medical practitioner;
 - (b) the carrying on of the practice of dentistry at any hospital attached to the University of Sydney or at any other hospital recognised by the Board as a training school for students in dentistry;
 - (c) the doing or performing by persons with prescribed training who are officers or employees of the Department of Health or employees of the Health Administration Corporation or a public hospital of such part of the practice of dentistry as may be prescribed, while carrying out under such conditions as may be prescribed in respect of any such part of the practice of dentistry, dental treatment provided by the Minister to school children and preschool children;
 - (d) the practice of dentistry by a person licensed under this Act to the extent to which the person is entitled to practise dentistry in terms of the licence;
 - (e) the doing or performing by persons with prescribed training of such part of the practice of dentistry as may be prescribed, while carrying out under the supervision of dentists and under such conditions as may be prescribed, dental treatment provided to the public in public hospitals or other prescribed institutions;
 - (f) the doing or performing by persons with prescribed training of such part of the practice of dentistry, related to the provision of dental hygiene services, as may be prescribed, under the supervision of dentists and under such conditions as may be prescribed;
 - (g) the performance by any person of any radiographic work:
 - (i) at a public hospital; or
 - (ii) on the order or at the request of a medical practitioner or a dentist;
 - (h) the carrying out of technical work by:
 - (i) a dental technician;
 - (ii) a person undergoing in good faith training in technical work under the supervision of a dentist or dental technician or employed as a probationary apprentice within the meaning of the Industrial and Commercial

- Training Act 1989 by a dental technician or by a person employing a dental technician; or
- (iii) a person approved by the Dental Technicians Registration Board pursuant to section 13 (2) (f) of the Dental Technicians Registration Act 1975 who is acting within the terms of the approval given in respect of the person,
- on the written order, in or to the effect of the form prescribed for the purposes of this paragraph, of a dentist or (where that work is part of the practice of dental prosthetics) in or to the effect of the form prescribed for the purposes of section 27 (b) (ii) of the Dental Technicians Registration Act 1975 of a dental prosthetist; or
- (i) the doing of any act by a dental prosthetist that forms part of the practice of dental prosthetics.

False entries in Register, misrepresentation etc.

58. A Registrar or other person who wilfully makes or causes to be made any false entry in or falsification of the Register, and any person who wilfully procures or attempts to procure himself or herself or any other person to be registered under this Act by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing, and any person aiding or assisting therein, is guilty of a misdemeanour, and is liable, on conviction, to a maximum penalty of 20 penalty units or imprisonment for a term not exceeding 12 months.

Appointment and powers of inspectors

59. (1) The Director-General may from time to time appoint an inspector or inspectors and such other officers as the Director-General may think fit for the purposes of this Act.

(2) For the purpose of ascertaining:

- (a) whether any provision of this Act or of the regulations has been or is being contravened by any dentist; or
- (b) whether a dentist is so conducting himself or herself as to be guilty of professional misconduct,

an inspector may enter any premises in which the dentist is carrying on the practice of dentistry and may make such inquiries as the inspector thinks fit.

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(3) An inspector may apply to an authorised justice for a search warrant if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened in any premises.

(4) An authorised justice to whom an application is made under subsection (3) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:

- (a) to enter the premises; and
- (b) to make such inquiries in the premises as the inspector thinks fit.

(5) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(6) A person must not wilfully delay or obstruct an inspector in the exercise of the inspector's powers under this section.

(7) In this section, "authorised justice" means:

- (a) a Magistrate; or
- (b) a justice of the peace employed in the Attorney General's Department.

Fees

60. (1) The fees payable under this Act are to be paid to the Registrar on behalf of the Board.

(2) Fees and other money received by the Registrar or the Board are to be paid into an account or accounts established by the Board.

(3) There may be paid from an account or accounts established by the Board:

- (a) amounts required to meet the expenses of the administration or execution of this Act; and
- (b) amounts for such other purposes as are set out in regulations made for the purposes of this section on the recommendation of the Board; and
- (c) out of any surplus remaining after due provision has been made to meet amounts referred to in paragraphs (a) and (b), such amounts as the Board determines should be paid into the Education and Research Account established under section 61.

Education and Research Account

61. (1) The Board is required to establish an Education and Research Account.

(2) The Board may at any time, and from time to time, appropriate any portion or portions of the money in the Education and Research Account for or towards dental education and research or any public purpose connected with the profession of dentistry within New South Wales.

(3) No appropriation may be made under this section unless the appropriation is authorised by a resolution passed by at least 6 members of the Board at a meeting specially convened for the purpose of considering the resolution.

Documentary evidence under hand of Registrar

62. A document purporting to be a certificate under the hand of the Registrar, and stating any one or more of the following matters:

- (a) that any person was or was not on any date or during any period mentioned in the certificate registered under this Act;
- (b) that on any date or during any period mentioned in the certificate the registration of any person was suspended,

is, in all courts and before all persons and bodies authorised by law to receive evidence, evidence of the facts stated.

Evidence of entry in Register

63. (1) Evidence of any entry in the Register may be given in all courts and before all persons and bodies authorised by law to receive evidence by production of a document purporting to be a true copy of such entry and purporting to be certified as such by the Registrar.

(2) An entry in the Register is, in all courts and before all such persons and bodies authorised by law to receive evidence, evidence of the truth of all matters contained in it.

Protection of Board and others from liability

64. No matter or thing done or suffered by a person being:

- (a) the Board or a member of the Board;

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- (b) the Registrar;
- (c) the Committee or a member of a Committee; or
- (d) an inspector,

in good faith in the execution or intended execution of this Act, or the exercise or discharge of any of the person's functions, subjects the person, or the Crown, to any action, liability, claim or demand.

Penalties

65. (1) Any person who contravenes any of the provisions of this Act for which a penalty is not expressly provided or who contravenes any provision of the regulations is liable, in addition to the person's liability (if any) to be removed from the Register for professional misconduct, to a penalty not exceeding 5 penalty units.

- (2) All penalties when recovered are to be paid to the Board.

Proceedings for offences

66. (1) Proceedings for an offence against this Act or the regulations may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) An information for an offence against this Act or the regulations may be laid by the Registrar, an inspector or other person appointed by the Board for the purpose or by a member of the Police Force.

Regulations

67. (1) The Governor, on the recommendation of the Board, may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

- (2) Without limiting subsection (1), regulations may be made:
 - (a) regulating the duties of officers under this Act;
 - (b) specifying the manner in which and the extent to which a dentist is authorised to advertise;
 - (c) specifying the manner in which and the extent to which a society, council, body or corporation referred to in section 5 (4) (c), (d), (e) or (f) may advertise the dental services available from it;

- (d) prohibiting a dentist from practising dentistry in any building in or on or in the vicinity of which is exhibited or displayed (whether by the dentist or by any other person) any advertisement, sign, notice or device which indicates or is capable of being understood to indicate that dentistry is practised in the building, other than an advertisement, sign, notice or device which is:
 - (i) authorised in pursuance of paragraph (c); or
 - (ii) of such character and dimensions and so exhibited or displayed as may be prescribed in the regulations;
- (e) regulating the holding of examinations under this Act, and prescribing the subjects of and fees for examinations;
- (f) providing for the issue of certificates for passing examinations and for registration under this Act;
- (g) prescribing the fees payable under this Act including fees payable for the inspection or alteration of the Register;
- (h) with respect to the furnishing to the Board by a dentist or an applicant for registration under this Act of evidence of the date of the person's birth;
- (i) prohibiting or regulating the use of any anaesthetic, or an anaesthetic of a specified kind or description, in the practice of dentistry;
- (j) regulating matters relating to complaints, including the fees to be paid on the making of complaints and the exemption from or the refund of any such fees;
- (k) providing for the granting to inspectors of certificates of appointment and the persons to whom and the circumstances in which an inspector is required to produce any such certificate;
- (l) in relation to the civil liability of dentists and incorporated practices:
 - (i) requiring dentists and incorporated practices to effect professional indemnity insurance or other insurance or indemnity arrangements;
 - (ii) specifying the insurers or indemnifiers with whom the insurance or indemnity arrangements are to be effected;
 - (iii) specifying the nature and extent of the insurance or indemnity arrangements and other matters relating to the insurance or indemnity arrangements; and

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- (iv) requiring the provision of information as to the insurance or indemnity arrangements effected;
- (m) the application of the provisions of this Act to incorporated practices and the modification of those provisions in their application; and
- (n) prescribing the records to be kept by persons engaged in the practice of dentistry, or any part of the practice of dentistry, and the time for which any such records shall be kept.

Repeal of Dentists Act 1934

68. The Dentists Act 1934 is repealed.

Repeal of Dentists Regulations

69. The Dentists Regulations are repealed.

Savings, transitional and other provisions

70. Schedule 4 has effect.

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD**

(Sec. 10)

PART 1 - THE MEMBERS

President and Deputy President of the Board

1. (1) Of the members of the Board, one (being a dentist) is, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, to be appointed as President of the Board and one is to be so appointed as Deputy President of the Board.

(2) The Governor may remove a member from the office of President or Deputy President.

(3) A person who is the President or Deputy President is to be taken to have vacated office as President or Deputy President if the person:

- (a) is removed from that office by the Governor under subclause (2);
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

Acting members and acting President

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

(2) The Deputy President may act in the office of President during the illness or absence of the President, and while so acting has all the functions of the President and is to be taken to be the President.

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

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**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD - *continued***

(4) A person is not eligible to be appointed under subclause (1) to act in the office of the member of the Board nominated by the Faculty of Dentistry at the University of Sydney unless the person is nominated by that Faculty.

(5) The Governor may remove any person from any office to which the person was appointed under this clause.

(6) A person while so acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(7) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President is to be taken to be an absence from office of the member, President or Deputy President, as the case may be.

Term of office

3. Subject to this Schedule:

- (a) an elected member of the Board holds office for 4 years from the date of the member's election, but is eligible (if otherwise qualified) for re-election; and
- (b) an appointed member of the Board holds office for such period, not exceeding 4 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

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

Filling of vacancy in office of member

5. (1) If the office of any member of the Board becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD - *continued***

(2) In the case of a vacancy in the office of an elected member, the vacancy is to be filled by a dentist nominated by the Australian Dental Association, New South Wales Branch.

(3) A person appointed to fill a vacancy in the office of an elected member is to be taken, for the purposes of this Act, to be an elected member.

Casual vacancies

6. (1) A member of the Board is to be taken to have vacated office if the member:

- (a) dies;
- (b) absents himself or herself from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister; or
- (g) in the case of an appointed member, is removed from office by the Governor under subclause (3) or (4) or under Part 8 of the Public Sector Management Act 1988.

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SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD - *continued*

(2) Without limiting the generality of subclause (1), a member who is appointed under:

- (a) section 8 (2) (b) (ii) - and who ceases to be a barrister or solicitor; or
- (b) section 8 (2) (b) (iii) - and who ceases to be an officer of the Department of Health,

is to be taken to have vacated office.

(3) The Governor may remove an appointed member from office.

(4) Without affecting the generality of subclause (3), the Governor may remove from office a member who contravenes the provisions of clause 7.

Disclosure of pecuniary interests

7. (1) A member of the Board who has a direct or indirect pecuniary interest:

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board; or
- (b) in a thing being done or about to be done by the Board,

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

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

is to be taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Board is required to cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book is to be open at all reasonable hours to the

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD - *continued***

inspection of any person on payment of such fee as may be determined by the Board from time to time.

(4) After a member has, or is taken to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member must not, unless the Board otherwise determines:

- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing, as the case requires.

(5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Board or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member is a dentist.

(7) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

Effect of certain other Acts

8. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member of the Board and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office;
or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

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

(3) The office of a member is to be taken for the purposes of any Act not to be an office or place of profit under the Crown.

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SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD - *continued*

PART 2 - THE PROCEDURE OF THE BOARD

General procedure

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

Quorum

10. Except as otherwise provided by this Act, the quorum for a meeting of the Board is 5 members.

Voting

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

Presiding member

12. (1) The President or, in the absence of the President, the Deputy President or in the absence of both of them, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Minutes

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

SCHEDULE 2 - PRESCRIBED ACADEMIC QUALIFICATIONS
(Secs. 15 (1), 16)

| Column 1 | | Column 2 |
|---|---|----------------------------|
| University, college, body, association or institution granting qualifications | | Qualifications |
| Name of university, college, body, association or institution | Place where university, college, body, association or institution is situated | |
| University of Queensland | Queensland | Bachelor of Dental Science |
| University of Adelaide | South Australia | Bachelor of Dental Surgery |
| University of Melbourne | Victoria | Bachelor of Dental Science |
| University of Western Australia | Western Australia | Bachelor of Dental Science |
| University of New Zealand | New Zealand | Bachelor of Dental Surgery |
| University of Otago | New Zealand | Bachelor of Dental Surgery |
| University of Edinburgh | United Kingdom | Bachelor of Dental Surgery |
| University of Glasgow | United Kingdom | Bachelor of Dental Surgery |
| University of London | United Kingdom | Bachelor of Dental Surgery |
| University of Dublin | Republic of Ireland | Bachelor in Dental Science |
| National University of Ireland | Republic of Ireland | Bachelor of Dental Surgery |
| University of Newcastle-Upon-Tyne | United Kingdom | Bachelor of Dental Surgery |
| University of Dundee | United Kingdom | Bachelor of Dental Surgery |
| University of Wales | United Kingdom | Bachelor of Dental Surgery |
| University of Belfast | United Kingdom | Bachelor of Dental Surgery |
| University of Birmingham | United Kingdom | Bachelor of Dental Surgery |
| University of Bristol | United Kingdom | Bachelor of Dental Surgery |
| University of Durham | United Kingdom | Bachelor of Dental Surgery |
| University of Leeds | United Kingdom | Bachelor of Dental Surgery |
| University of Liverpool | United Kingdom | Bachelor of Dental Surgery |
| University of Manchester | United Kingdom | Bachelor of Dental Surgery |
| University of St. Andrews | United Kingdom | Bachelor of Dental Surgery |
| University of Sheffield | United Kingdom | Bachelor of Dental Surgery |

**SCHEDULE 3 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE COMMITTEE**

(Sec. 27)

PART 1 - THE MEMBERS

Chairperson of the Committee

1. The member referred to in section 26 (2) (a) is to be the Chairperson of the Committee.

Term of office

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

Remuneration

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

Filling of vacancy in office of member

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

Casual vacancies

5. (1) A member of the Committee is to be taken to have vacated office if the member:

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

**SCHEDULE 3 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE COMMITTEE - *continued***

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
 - (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
 - (f) resigns the office by instrument in writing addressed to the Minister; or
 - (g) is removed from office by the Minister under subclause (3).
- (2) Without limiting the generality of subclause (1), a member who is appointed under section 26 (2) (a) or (b) and who ceases to be a dentist is to be taken to have vacated office.
- (3) The Minister may remove a member from office.

PART 2 - THE PROCEDURE OF THE COMMITTEE

General procedure

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

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**SCHEDULE 3 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE COMMITTEE - *continued***

Quorum

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

Voting

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

Presiding member

9. (1) The Chairperson of the Committee or, in the absence of the Chairperson, another member of the Committee elected to chair the meeting by the members present, is to preside at a meeting of the Committee.

(2) The person presiding at any meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS**

(Sec. 70)

Interpretation

1. In this Schedule:

"new Board" means the Dental Board constituted by this Act;

"old Board" means the Dental Board constituted by the 1934 Act;

"the 1934 Act" means the Dentists Act 1934.

Elections, appointments etc. before commencement

2. For the purpose only of enabling the new Board to be constituted on or after (but not before) the commencement of Part 2, elections may be held and appointments may be made under this Act and anything else (including the making of regulations) may be done before that commencement as if the whole of this Act commenced on the date of assent to this Act, but so that no election or appointment as a

**SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued***

member of the new Board as so constituted takes effect before that commencement.

First meeting of new Board

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

Inspectors and other officers

4. A person holding office as an inspector or officer (other than registrar) under the 1934 Act immediately before the commencement of section 68 is to be taken to have been appointed as an inspector or officer, as the case requires, under this Act and to have been appointed subject to the same terms and conditions as applied to the appointment immediately before that commencement.

Register

5. The register referred to in section 6 (1) of the 1934 Act is to be taken to be the Register referred to in section 12 (1) of this Act.

Registration etc. of dentists

6. (1) A person who, immediately before the commencement of Part 4, was registered as a dentist under the 1934 Act is to be taken to be registered as a dentist under this Act and is to be taken to be so registered subject to the same terms and conditions (if any) as applied to the person's registration under the 1934 Act immediately before that commencement.

(2) A person who, immediately before the commencement of Part 4, was licensed to practise under section 10A (2) of the 1934 Act is to be taken to be licensed to practise under section 18 (1) of this Act and is to be taken to be so licensed subject to the same terms and conditions (if any) as applied to the licence under the 1934 Act immediately before that commencement.

(3) A person who, immediately before the commencement of Part 4, was the holder of a certificate of provisional registration under section 10C (1) of the 1934 Act is to be taken to be the holder of a

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SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

certificate of provisional registration under section 21 (1) of this Act and is to be taken to be such a holder subject to the same terms and conditions (if any) as applied to the certificate under the 1934 Act immediately before that commencement.

Fees

7. A fee paid or which remains unpaid under a provision of the 1934 Act immediately before the commencement of section 68 is to be taken to have been paid or to remain unpaid under the provision of this Act which corresponds to that provision and is to be taken to have been so paid or to so remain unpaid for or in relation to the same period as that which applied to the fee under the 1934 Act.

Dental Board Education and Research Account

8. The funds standing to the credit of the Dental Board Education and Research Account under section 16 (2) of the 1934 Act are, on the establishment by the Board of the Education and Research Account under section 61 of this Act, to be transferred to the Account so established.

Construction of certain references

9. On and from the commencement of section 68, a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind (enacted, made or executed before that commencement):

- (a) to the 1934 Act is to be read as a reference to this Act;
- (b) to the Dental Board is to be read as a reference to the new Board;
- (c) to the registrar under the 1934 Act is to be read as a reference to the Registrar under this Act;
- (d) to an inspector under the 1934 Act is to be read as a reference to an inspector under this Act;
- (e) to the register referred to in section 6 (1) of the 1934 Act is to be read as a reference to the Register referred to in section 12 (1) of this Act;

**SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued***

- (f) to the registration of a person under the 1934 Act is to be read as a reference to the registration of a person under this Act;
- (g) to a license under section 10A (2) of the 1934 Act is to be read as a reference to a licence under section 18 (1) of this Act;
- (h) to a certificate of provisional registration under section 10C (1) of the 1934 Act is to be read as a reference to a certificate of provisional registration under section 21 (1) of this Act; or
- (i) to the Dental Board Education and Research Account is to be read as a reference to the Education and Research Account under section 61 of this Act.

Applications for registration

10. (1) An application for registration as a dentist under the 1934 Act which had not been determined by the old Board before the commencement of Part 4 is to be taken to be an application for registration as a dentist under this Act.

(2) An application to be registered by virtue of section 10BA of the 1934 Act which had not been determined by the old Board before the commencement of Part 4 is to be taken to be an application to be registered by virtue of section 20 of this Act.

Appeals to the District Court

11. (1) An appeal to the District Court under section 8B of the 1934 Act pending immediately before the commencement of section 68 is to be continued and disposed of as if, except as provided by subclause (2), this Act had not been enacted.

(2) The decision of the District Court on any such appeal is final, is binding upon the new Board and the appellant and for the purposes of this Act is to be taken to be the final decision of the new Board.

Complaints

12. A complaint received by the old Board under section 8 (4A) of the 1934 Act and in relation to which an enquiry had not been completed before the commencement of Part 6 is to be taken to be a complaint made under section 31 of this Act and may be dealt with accordingly.

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SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

Dentists' charges

13. An application made to the Dentists Charges Committee under section 12A of the 1934 Act which had not been finally determined before the commencement of Part 6 is to be taken to be a complaint made under section 31 of this Act and may be dealt with accordingly.

Interpretation Act 1987 not affected

14. Nothing in this Schedule limits section 30 of the Interpretation Act 1987.

Regulations

15. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later day and may so have effect notwithstanding any other provision of this Schedule.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

[Minister's second reading speech made in -
Legislative Assembly on 2 August 1989
Legislative Council on 19 September 1989]