

## DENTISTS BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to regulate the practice of dentistry in New South Wales.

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#### PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 defines expressions used in the proposed Act.

Clause 4 defines the meaning of the expression "the practice of dentistry" for the purposes of the proposed Act.

Clause 5 defines the meaning of the expression "professional misconduct" for the purposes of the proposed Act.

#### PART 2 - THE DENTAL BOARD

Clause 6 provides for the constitution of the Dental Board.

Clause 7 specifies the functions of the Board.

Clause 8 provides that the Board is to consist of 9 members, 5 of whom are to be dentists elected by dentists and 4 of whom are to be appointed by the Governor.

Clause 9 enables the Board to establish committees to assist it in connection with the exercise of its functions.

Clause 10 gives effect to Schedule 1 which contains provisions relating to the members and procedure of the Board.

**PART 3 - THE REGISTRAR AND THE REGISTER**

**Clause 11** enables the Board to appoint a Registrar and other staff.

**Clause 12** requires the establishment of a Register of dentists and specifies the particulars that are to be entered in it.

**Clause 13** requires the payment of an annual roll fee by dentists of an amount determined by the Board and approved by the Minister. The clause makes provision for the removal from the Register of the name of a dentist who fails to pay the annual roll fee by the due date.

**Clause 14** requires the Board to ensure that the names of certain persons (such as deceased dentists and persons who have ceased to be dentists) are removed from the Register.

**PART 4 - REGISTRATION**

**Division 1 - Registration and licensing**

**Clause 15** specifies the qualifications that entitle a person to be registered as a dentist and the circumstances in which the Board is and is not entitled to refuse registration to a person who possesses the requisite qualifications.

**Clause 16** enables the amendment, by proclamation, of Schedule 2 to the proposed Act which lists those educational qualifications obtained outside New South Wales which are to be recognised for the purposes of registration.

**Clause 17** specifies further qualifications which will enable a person to be registered as a dentist.

**Clause 18** specifies the circumstances in which a person, although not entitled to be registered as a dentist, may, with the concurrence of the Minister, be licensed to practise dentistry.

**Clause 19** requires that, in order for a person to be registered or licensed under the proposed Act, the person must have an adequate knowledge of the English language.

**Division 2 - Conditional and provisional registration**

**Clause 20** specifies the circumstances in which a person, although not entitled to be registered, may be granted conditional registration.

**Clause 21** enables the Registrar to grant provisional registration to a person pending the determination by the Board of an application by the person to be registered or pending the conferring on a person of an academic qualification to which the person is entitled.

**Division 3 - Miscellaneous**

**Clause 22** enables the Board to refuse an application for registration on the ground that the applicant does not have sufficient physical or mental capacity to practise dentistry.

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Clause 23 provides that registration and licensing fees are to be such amounts as are determined by the Board and approved by the Minister.

**PART 5 - THE DENTAL CARE ASSESSMENT COMMITTEE**

Clause 24 provides for the constitution of the Dental Care Assessment Committee.

Clause 25 specifies the functions of the Committee.

Clause 26 provides that the Committee is to consist of 4 members to be appointed by the Minister.

Clause 27 gives effect to Schedule 3 which contains provisions relating to the members and procedure of the Committee.

**PART 6 - COMPLAINTS AND DISCIPLINARY PROCEEDINGS**

**Division 1 - Complaints**

Clause 28 provides for the application of the proposed Part to incorporated practices and for the taking of disciplinary action against the directors of an incorporated practice who are dentists if a complaint made against the corporation is found to be substantiated by the Board.

Clause 29 provides that the proposed Part is to apply to persons even though they have ceased to be registered as dentists.

Clause 30 provides for the application of the proposed Part in relation to persons who are licensed (rather than registered) under the proposed Act.

Clause 31 specifies the grounds on which a complaint may be made against a dentist and the manner in which a complaint is to be made.

Clause 32 requires notice to be given to the Board by a person prescribed by regulations to be made for the purposes of the proposed Act if a dentist is found to be suffering from a mental incapacity.

Clause 33 specifies the procedures which may be undertaken by the Board on receipt of a complaint in order to commence its preliminary investigation.

Clause 34 enables the Board to deal with a complaint informally, formally, by referring the complaint to the Dental Care Assessment Committee, by declining to deal with the complaint, by taking no further action concerning the complaint or by dismissing the complaint. For example, a complaint which alleges a breach of the provisions under which a dentist is authorised to advertise might be expected to be dealt with informally by the Board or by a committee of the Board; a complaint, the substance of which, if substantiated, is sufficiently serious to be likely to result in the removal of a dentist's name from the Register or a dentist's suspension from practice might be expected to be dealt with formally by the Board at an inquiry; a complaint which appears to relate to an amount charged by a dentist for dental treatment might be expected to be referred by the Board to the Dental Care Assessment Committee; and a complaint which is frivolous or vexatious might be declined to be dealt with by the Board or dismissed.

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

**Clause 35** provides that if the Board decides to investigate a complaint informally, it is to investigate the complaint itself or cause it to be investigated by a committee of the Board. If the Board causes the complaint to be investigated by a committee of the Board, the committee is not empowered to determine the complaint but only to make a recommendation to the Board as to its determination.

**Clause 36** specifies the functions of the Board or a committee of the Board in investigating a complaint.

**Clause 37** provides that parties appearing before the Board or a committee of the Board are not entitled to be legally represented at the appearance.

**Clause 38** provides that 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**

**Clause 39** requires the Dental Care Assessment Committee, in the first instance, to attempt the prompt settlement of any complaint referred to it by the Board.

**Clause 40** enables the Committee to obtain any necessary evidence or advice.

**Clause 41** enumerates the matters to which the Committee is to have regard in investigating an amount charged for dental treatment.

**Clause 42** provides that the Committee may not determine a complaint referred to it but may only make a recommendation to the Board as to its determination. The clause specifies the types of recommendations that may be made.

**Clause 43** provides that parties appearing before the Committee are not entitled to be legally represented at the appearance.

**Clause 44** provides that the finding or recommendation of the Committee is admissible as evidence in any legal proceedings.

**Clause 45** enables the Committee to investigate an amount charged for dental treatment, even if the amount has been paid, but disentitles the Committee from investigating certain treatment for the purposes of the Workers Compensation Act 1987.

**Division 4 - Conducting of inquiries by the Board**

**Clause 46** requires the Board, if it decides to conduct an inquiry into a complaint, to sit as in open court and to hear the person against whom the complaint is made. The person may be legally represented for that purpose. The member of the Board presiding at the inquiry is given the powers of the chairman of a commission constituted under the Royal Commissions Act 1923.

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**Division 5 - Disciplinary action by the Board**

Clause 47 specifies the types of action which may be taken by the Board if it finds a complaint against a dentist to be substantiated. These include the administering of a caution or reprimand, suspending a dentist's registration and imposing a fine.

Clause 48 requires the Board to give the parties to a complaint a written statement as to its decision which is to include the reasons for the decision.

Clause 49 provides that, where the name of a person is removed from the Register or the registration of a person is suspended, the person is to be taken to be not registered as a dentist.

Clause 50 specifies the circumstances in which a person whose name has been removed from the Register may have his or her name restored to the Register.

**PART 7 - APPEALS**

Clause 51 lists the grounds on which a person aggrieved by a decision of the Board may appeal against the decision. Any appeal is to be made to the District Court.

Clause 52 provides for the manner in which appeals may be made to, and for the determination of appeals by, the District Court.

**PART 8 - MISCELLANEOUS**

Clause 53 specifies the circumstances in which a dentist may carry on the practice of dentistry as a director or employee of a corporation (in the proposed Act called "incorporated practices").

Clause 54 provides that claims that may be made against an incorporated practice in relation to any liability arising out of or in the course of the practice of dentistry may be made against each director of the incorporated practice who is a dentist.

Clause 55 regulates the use by dentists of diplomas, degrees, licences, letters, testimonials and titles to those which the Board has authorised to be entered in the Register in connection with the dentists concerned.

Clause 56 makes it an offence for an unregistered person to hold himself or herself out to be a dentist.

Clause 57 prohibits the practice of dentistry by an unregistered person.

Clause 58 makes it an offence for a person to make a false entry in the Register or to seek to have a false entry made in the Register.

Clause 59 provides for the appointment and powers of inspectors for the purposes of the proposed Act.

Clause 60 specifies the manner of payment of fees determined under the proposed Act.

Clause 61 requires the Board to establish an Education and Research Account and specifies the purposes for which money in the Account may be appropriated.

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**Clause 62** enables evidence to be given of various matters by means of a certificate signed by the Registrar.

**Clause 63** enables evidence to be given of an entry in the Register by means of a copy of the entry certified by the Registrar.

**Clause 64** exempts certain persons acting in good faith in execution of the Act from liability for their actions.

**Clause 65** imposes a general penalty of 5 penalty units for breaches of the proposed Act or the regulations to be made under it and provides for the payment of penalties to the Board.

**Clause 66** provides that proceedings for offences against the proposed Act or regulations are to be dealt with summarily before a Local Court constituted by a single Magistrate.

**Clause 67** enables the Governor-in-Council to make regulations for the purposes of the proposed Act.

**Clause 68** repeals the Dentists Act 1934.

**Clause 69** repeals the Dentists Regulations made under the Dentists Act 1934.

**Clause 70** is a formal provision which gives effect to the Schedule of savings, transitional and other provisions necessitated as a consequence of the repeal of the Dentists Act 1934.

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

**Schedule 1** contains provisions relating to the offices of members of the Board and the procedures to be followed by the Board in conducting its meetings.

### **SCHEDULE 2 - PRESCRIBED ACADEMIC QUALIFICATIONS**

**Schedule 2** lists academic qualifications obtained outside New South Wales the holding of which entitles a person to apply to the Board for registration as a dentist.

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

**Schedule 3** contains provisions relating to the offices of members of the Committee and the procedures to be followed by the Committee in conducting its meetings.

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

**Schedule 4** contains savings, transitional and other provisions necessitated as a consequence of the repeal of the Dentists Act 1934.

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