

AUSTRALIAN CAPITAL TERRITORY

DENTISTS ACT 1931

INSTRUMENT NO. 311 OF 2000

APPOINTMENT

EXPLANATORY STATEMENT

As part of the Boards role to protect the public, the Dental Board of the ACT is currently conducting an Inquiry into the conduct of a registered dentist. During the proceedings of the Inquiry, counsel for the dentist who is the subject of the Inquiry, raised the issue of "reasonable apprehension of bias" against two members of the Board on the grounds that they had heard a previous complaint involving the same dentist.

The challenge of "reasonable apprehension of bias" was heard in the Supreme Court. The result of the Supreme Court decision is that the Chairperson is prohibited from conducting the Inquiry, and that one other Board member, Dr Trigger is prohibited from hearing the Inquiry, due to a professional association with a potentially important witness. The Supreme Court ruled that the Board reconstitute itself so that it may conduct the Inquiry.

Section 23(1) of the *Health Professions Boards (Procedures) Act 1981* specifies that the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson shall preside at an Inquiry before the Board. At a meeting on 19 July 2000, the Board elected Dr Dahlstrom as the new Deputy Chairperson. The term of appointment for the previous Deputy Chairperson, Dr Bonanno, expired on 22 July 2000. Dr Bonanno was also disqualified from hearing the Inquiry, as he was a member of the Complaints Committee, and also a treating dentist of one of the complainants. In the absence of the Chairperson, Dr Dahlstrom will preside at the Inquiry.

In addition, at the meeting of the Board on 19 July 2000, the Chairperson granted Dr Amanda McKeon a leave of absence for personal reasons in accordance with section 12(2) of the *Health Professions Boards (Procedures) Act 1981*. Section 12(2) of the Procedures Act states that the Chairperson of a Board may grant a leave of absence to a member of that Board for a period not exceeding 1 year and upon such terms and conditions as the Chairperson determines. Accordingly, the Chairperson granted Dr McKeon a leave of absence for up to a period of 12 months or until the completion of the current Inquiry.

The result of the above is that the Chairperson and three other Board members, Dr Trigger, Dr Bonanno and Dr McKeon, are unable to hear the Inquiry. Section 23(2) of the *Health Professions Boards (Procedures) Act 1981*, states that the Board shall not conduct an Inquiry unless the number of members present for the purpose of conducting the Inquiry constitutes a majority of the Board. The Board did not have a quorum to hold the Inquiry and was therefore unable to perform its legislative functions in the protection of the public.

Section 7(1) of the *Health Professions Boards (Procedures) Act 1981* allows the Minister to appoint a person to act as a member of the Board for a period not exceeding 12 months during a vacancy on the Board, or where a member is absent from duty, or for any other reason, is unable to perform the functions of the office. A vacancy existed following the granting of a leave of absence to Dr McKeon.

The Minister has appointed Dr David Griffiths to the Board as an acting member for the duration of the Inquiry. The appointment of Dr Griffiths to the Board for this purpose ensures a quorum of the Board to conduct the Inquiry. Dr Griffiths is a previous serving member of the Board from 1984 to 1989 and has experience in Board matters.

This instrument was previously gazetted as Instrument No. 275 of 2000, however, the period of commencement of the appointment was not specified, nor did it clearly state the specific Inquiry for which the appointment was required. The attached instrument specifies that the appointment will take effect on date of gazettal and also specifies that the appointment is for Inquiry No. 1 of 2000.

Although Instrument No. 275 of 2000 appeared in the *Gazette* on 17 August 2000, Dr Griffiths has not commenced any duties relevant to the appointment. Therefore, no person's rights have been prejudicially effected, nor have any liabilities been imposed on any person during the relevant period of retrospectivity.