

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

DENTAL TECHNICIANS AND DENTAL PROSTHETISTS REGISTRATION ORDINANCE 1988

No 85, 1988

The Dental Technicians and Dental Prosthetists Registration Ordinance 1988 (the new Ordinance) is a new registration Ordinance for dental technicians and dental prosthetists. The main effect of the new Ordinance is to establish a Dental Technicians and Dental Prosthetists Board which will have charge of the administration, registration and conduct of dental technicians and dental prosthetists. The new Ordinance provides for:

- the registration of practising dental technicians and dental prosthetists;
- the registration of companies practising dental technical work or dental prosthetics;
- annual registration of practitioners;
- the taking out of professional indemnity insurance by registered dental prosthetists;
- the capacity to conduct inquiries into the conduct of registered persons by the Board and the power to discipline registered persons.

Consultation in the formulation of the new Ordinance has taken place with persons practising dental technical work and dental prosthetics in the Australian Capital Territory and in New South Wales and with the Dental Board of the Australian Capital Territory. A number of recommendations from these bodies have been incorporated into the new Ordinance.

Details of the new Ordinance are set out in the Attachment.

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PART I - PRELIMINARY

Section 1 provides for the short title of the new Ordinance which is the Dental Technicians and Dental Prosthetists Registration Ordinance 1988.

Section 2 provides that the new Ordinance comes into operation on such date as is fixed by the Minister for the Arts and Territories by notice in the Gazette.

Section 3 defines words and phrases used in the proposed Ordinance. The main definitions are those relating to "artificial denture", which is meant to include a partial artificial denture and the definition of "dental technical work".

Section 4 defines the phrase "dental prosthetic service".

PART II - THE DENTAL TECHNICIANS AND DENTAL PROSTHETISTS BOARD

Division 1 - General

Section 5 establishes the new Dental Technicians and Dental Prosthetists Board.

Section 6 provides that the Board shall consist of its Chairperson and six other members.

Section 7 provides that the Chairperson and all members be appointed by the Minister.

Section 8 provides that the Chairperson be the Executive Officer of the Board.

Section 9 provides for the election of a Deputy Chairperson by the members of the Board.

Section 10 provides for the resignation of members of the Board including the Chairperson.

Section 11 provides for removal of any member from the Board by the Minister for misbehaviour or physical or mental incapacity.

Section 12 provides for the granting of leave of absence by the Minister to the Chairperson of the Board.

Section 13 provides that members are not entitled to remuneration except for expenses reasonably incurred by the member in performance of his or her duties.

Section 14 requires that a member disclose any interest in a matter considered by the Board and that such disclosure is to be recorded in the minutes of the meeting. It also provides that the member shall not be present during any deliberation of the Board with respect to the matter or take any part in any decision of the Board in relation to the matter unless the Minister or the Board otherwise determines.

Section 15 provides that a Board member shall not be subject to direction in respect of any act done as a member.

Section 16 provides for protection of members from criminal or civil action for things done in good faith as members, except for actions in negligence.

Section 17 provides for an annual report of the Board's operations to be given to the Minister.

Division 2 - Meetings

Section 18 provides for the holding of meetings by the Board. The Minister may direct the holding of a meeting.

Section 19 provides for a quorum at a meeting to be constituted by 4 members.

Section 20 provides for the Chairperson to preside at all meetings.

Section 21 provides for 7 days notice in writing for notices of motion, in relation to meetings.

Section 22 provides for the Board to keep record of its proceedings.

Section 23 provides for questions arising at meetings to be determined by a majority of votes of members. The Chairperson has a deliberative vote at meetings.

PART III - REGISTRATION AND QUALIFICATIONS

Section 24 provides for two registers to be kept by the Board, one for dental technicians and the other for dental prosthetists.

Section 25 provides for application for registration as a dental technician or a dental prosthetist to be made on a form approved by the Board, to be accompanied by the determined fee and to be lodged with the Chairperson of the Board.

Section 26 provides for the registration of natural persons. In the case of dental technicians the applicant is required to be entitled to practise as a dental technician in a State or another Territory or to have completed an examination approved by the Board. In the case of dental prosthetists the applicant is required to be a registered dental technician in the Australian Capital Territory and also is required to be entitled to practise as a dental prosthetist in a State or another Territory or have completed an examination approved by the Board. In the case of both dental technicians and dental prosthetists the applicants are required to have an adequate knowledge of the English language, to be fit and proper persons and to be domiciled in Australia. In the case of dental prosthetists applicants are required to have professional indemnity insurance.

Section 27 provides for the registration of companies practising dental technical work or dental prosthetics. The Board is required to register an applicant company provided it is not prohibited by its Memorandum of Association from carrying on business as a dental technician or dental prosthetist, provided that at least one of the directors of the company is a registered dental technician or registered dental prosthetist and provided the controlling interest in the company is held by one or more registered dental technicians or registered dental prosthetists.

Section 28 provides for the Board to require applicants to attend personally before the Board and, in the case of an applicant company, for the director of the company to attend before the Board. The Board may refuse an application if the applicant or director does not attend.

Section 29 provides for provisional registration for a period of not more than 3 months. This registration will not be renewable and is intended as an interim measure pending the outcome of an application for full registration.

Section 30 provides for temporary registration by the Board. Such registration can be for a total period of up to 6 months and is granted to a person entitled to practise as a dental technician or dental prosthetist in a State or Territory and who intends to practise on behalf of a registered dental technician or dental prosthetist. Temporary registration will not be granted to a person who has been temporarily registered for 6 months or more in the period of 24 months prior to application for temporary registration.

Section 31 provides that the procedural formalities of registration apply to both provisional and temporary registration.

Section 32 provides for the particulars to be entered in the Register, including the person's name, professional address and qualifications.

Section 33 provides for issue of a certificate of registration.

Section 34 provides for payment of an annual registration fee on or before 1 September in each year.

Section 35 provides for notification to the Chairperson of any change in address entered in the Register, and, in the case of a company, notification of the establishment of or ceasing to have an address at which the company carries on business in the Territory.

Section 36 provides for alteration of the Register in the case of persons who have died or in the case of a company which has been wound up or ceased to be registered. It also provides for alteration of the Register at the instance of a registered person or at the instance of the Board.

PART IV - PERFORMANCE OF DENTAL TECHNICAL WORK AND PROVISION OF DENTAL PROSTHETIC SERVICES

Section 37 provides that it is an offence for a person other than a registered dental technician to perform dental technical work for fee or reward. It also provides that a registered dental technician shall not practise under a name other than the name under which that technician is registered. The same provision also applies to registered dental prosthetists.

Section 38 provides that it is an offence for a dental technician to carry on business under a business name which includes words other than 'dental technician' or 'dental laboratory' and for a dental prosthetist to carry on business under a business name using words other than 'dental prosthetist' or 'denture clinic'.

Section 39 requires registered dental prosthetists to have professional indemnity insurance.

Section 40 provides that registered dental technicians are not to perform dental technical work other than on the written order of a dentist or a registered dental prosthetist.

Section 41 entitles only a registered dental technician or registered dental prosthetist to recover fees for work performed or services provided. The registered person must render an account before taking legal action except where an application could be made for an order under Part II of the Arrest on Mesne Process Act 1902 of the State of New South Wales in its application to the ACT.

Section 42 gives a person liable to pay a fee for a dental prosthetic service or dental technical work performed, the right to apply to the Board, within one month after service of the account, for review of the account. The Board shall then, after a review taking into account what is a reasonable amount for fee, certify the amount which the Board considers is a reasonable fee for that service. The provision will give the Board powers necessary to investigate the level of fees that is standard with other health professions registration legislation. It provides protection to consumers.

Section 43 provides that on the death of a registered person that person's personal representative may carry on the business of the deceased if the practice is carried on by another registered person. This can occur for a six month period which can be extended by the Board.

PART V - DISCIPLINARY PROCEDURES

Division 1 - Cancellation and Suspension

Section 44 specifies the grounds upon which the registration of a person may be cancelled or suspended. It also enables the Board to reprimand registered persons. These grounds include fraudulently obtained registration, loss of qualifications or right to practise, conviction for certain kinds of offences, habitual drunkenness or addiction to drugs and conduct rendering a person unfit to practise. It also allows the cancellation of the registration of a company if the company is prohibited by its Memorandum of Association from carrying on business as a dental technician or dental prosthetist, or at least one of the directors of the company is not a registered dental technician or registered prosthetist, or if the controlling interest in the company is not held by one or more registered dental technicians or registered dental prosthetists.

Section 45 requires the Board to hold an inquiry before cancelling registration of, or reprimanding a person. The Board may suspend temporarily the registration of a person to whom an inquiry relates.

Section 46 provides that a person whose registration has been suspended shall, during the period of the suspension, be deemed not to be registered.

Section 47 provides that a person may apply for re-registration or termination of suspension as the case may be, on the ground that circumstances have changed since the cancellation or suspension of registration.

Division 2 - Inquiries

Section 48 provides for a definition of 'barrister and solicitor' and 'inquiry'.

Section 49 empowers the Minister to direct the Board to conduct an inquiry.

Section 50 requires the Board to serve notice in writing of an inquiry on each party to the inquiry.

Section 51 provides for a quorum at an inquiry to be constituted by the Chairperson and at least three other members and for the Chairperson to preside at the inquiry.

Section 52 requires the Board to keep a record of the proceedings at any inquiry.

Section 53 details the procedures at an inquiry including expedition, informality and as little technicality in the conduct of the inquiry as a proper consideration of the matters before the Board permit. The Board is not to be bound by the rules of evidence and the Chairperson may give directions as to the procedures to be followed at the inquiry.

Section 54 provides that an inquiry be held in public except where there is evidence of a confidential nature or where the Board directs that the inquiry be held in private. The Board may also give directions prohibiting or restricting the publication of evidence. It will be an offence for a person to refuse or fail to comply with a direction given by the Board.

Section 55 provides that the Attorney-General may appoint a barrister and solicitor to assist the Board at an inquiry and that the Chairperson may appoint a person other than a barrister and solicitor to assist the Board at an inquiry.

Section 56 provides for representation of a party at an inquiry by another person.

Section 57 lists the powers of the Board at an inquiry including requiring evidence on oath or affirmation, proceeding in the absence of the party and summoning a party to attend for the purpose of giving evidence or producing documents, and adjourning an inquiry.

Section 58 empowers a member of the Board to inspect any document produced at an inquiry and make copies of that document. The Board will also be empowered to retain a document produced at an inquiry for as long as is necessary for the purposes of that inquiry.

Section 59 requires the Board to make a decision at the conclusion of an inquiry in accordance with the opinion of the majority of members or in the case where there is no majority, in accordance with the opinion of the Chairperson.

Section 60 gives the same immunity from prosecution to a person representing a party at an inquiry as a barrister and solicitor has in appearing for a party in proceedings in the Supreme Court of the Australian Capital Territory. A witness also has the same immunity and protection.

Section 61 provides for expense allowances to be paid by the Board to witnesses attending an inquiry.

Section 62 makes it an offence for a person, served with a summons to give evidence before the Board at an inquiry, to refuse or fail to attend the inquiry or produce a document without reasonable excuse.

PART VI - MISCELLANEOUS
Division 1 - Review of Board's Decision

Section 63 vests jurisdiction in the Administrative Appeals Tribunal to review decisions which the Board or the Chairperson may make under the Ordinance.

Section 64 requires that where either the Board or the Chairperson have made an adverse decision concerning a person, the Board or the Chairperson must advise the person of the decision and of his or her entitlement to apply to the Administrative Appeals Tribunal for a review of the decision.

Division 2 - General

Section 65 enables the Board or the Chairperson to require an applicant for registration to provide additional information and penalise those who provide false or misleading information.

Section 66 provides that a person may inspect an entry in the Register or obtain a certified copy of an entry in the Register upon payment of a fee.

Section 67 provides that a document signed by the Chairperson or Deputy Chairperson which relates to a decision is conclusive evidence of that decision.

Section 68 makes it an offence to insult a member of the Board, interrupt an inquiry or create a disturbance while an inquiry is being held.

Section 69 empowers the Chairperson, if it is in the public interest to do so, to publish a notice in the Gazette of any decision and the reasons for the decision, including the findings on material questions of fact in relation to a decision to cancel a person's registration, suspend a person or reprimand a person.

Section 70 provides for annual publication in the Gazette of the names and addresses of registered persons.

Section 71 provides that in the case of practitioner companies where in proceedings for an offence against the Ordinance it is necessary to establish the state of mind of a company in relation to particular conduct, it will be enough to show that the conduct was engaged in by a director, servant or agent of the company within the scope of his or her actual or apparent authority and that the director, servant or agent had the state of mind. The conduct will also implicate the company unless it is shown that the company took reasonable precautions and exercised due diligence to avoid the conduct. The same criteria will apply in relation to proceedings for offences against a natural person.

Section 72 gives the Minister for the Arts and Territories the power to determine fees for the purposes of the new Ordinance.

Section 73 empowers the Minister for the Arts and Territories to make regulations under the new Ordinance. It is not intended that any regulations will be passed together with the new Ordinance.

PART VII - TRANSITIONAL

Section 74 gives applicants for registration under the new Ordinance 6 months within which to apply for and obtain registration under the new Ordinance. This provision applies to persons who have performed dental technical work or provided dental prosthetic services for a period of 3 years during the period of 5 years immediately preceding the commencement of the new Ordinance. It also provides that persons who have performed dental technical work for a period of 3 years during the period of 5 years immediately preceding the commencement of the new Ordinance are entitled to apply for registration as dental technicians and will require the Board to register such applicants. The provision also provides that an applicant for registration as a dental technician or dental prosthetist need not comply with Part IV of the new Ordinance (relating to the performance of dental technical work and the provision of dental prosthetic services) until the Board has determined his or her application.

Section 75 provides that a person who has performed dental technical work or provided dental prosthetic services for a period of 2 years immediately preceding the commencement of the new Ordinance, and who is entitled to apply for registration, is deemed to be eligible for appointment as a member of the first Dental Technicians and Dental Prosthetists Board.