

**House of Assembly—No 65**

As laid on the table and read a first time, 27 September 2006

South Australia

**Dental Practice (Miscellaneous) Amendment  
Bill 2006**

A BILL FOR

An Act to amend the *Dental Practice Act 2001*; and to make related amendments to the *Chiropractic and Osteopathy Practice Act 2005*, the *Medical Practice Act 2004*, the *Occupational Therapy Practice Act 2005*, the *Physiotherapy Practice Act 2005* and the *Podiatry Practice Act 2005*.

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### Part 2—Amendment of *Dental Practice Act 2001*

- 4 Amendment of long title
- 5 Amendment of section 3—Interpretation
- 6 Amendment of section 4—Medical fitness to provide dental treatment
- 7 Amendment of section 6—Composition of Board
- 8 Insertion of section 6A
  - 6A Elections and casual vacancies
- 9 Amendment of section 7—Terms and conditions of membership
- 10 Amendment of section 13—Functions of Board
- 11 Amendment of section 14—Committees
- 12 Amendment of section 16—Board's procedures
- 13 Substitution of section 17
  - 17 Conflict of interest etc under Public Sector Management Act
- 14 Amendment of section 18—Powers of Board in relation to witnesses etc
- 15 Amendment of section 19—Principles governing hearings
- 16 Amendment of section 21—Costs
- 17 Amendment of section 23—Annual report
- 18 Amendment of section 25—Composition of Tribunal
- 19 Amendment of section 26—Terms and conditions of appointed members
- 20 Substitution of section 29
  - 29 Registrar of Tribunal
  - 29A Constitution of Tribunal for purpose of proceedings
  - 29B Protection from personal liability
- 21 Amendment of heading to Part 4
- 22 Amendment of section 30—Registers
- 23 Amendment of section 31—Authority conferred by registration
- 24 Amendment of section 32—Registration of natural persons as dental practitioners
- 25 Repeal of section 33
- 26 Amendment of section 34—Registration of dental students
- 27 Amendment of section 35—Application for registration and provisional registration
- 28 Amendment of section 36—Removal from register
- 29 Amendment of section 37—Reinstatement on register
- 30 Amendment of section 38—Fees and returns
- 31 Substitution of Part 4 Division 3
  - Division 3—Special provisions relating to dental services providers
    - 39 Information to be given to Board by dental services providers
- 32 Substitution of section 43
  - 43 Illegal holding out concerning limitations or conditions
- 33 Amendment of section 44—Use of certain titles or descriptions prohibited
- 34 Amendment of section 45—Restrictions on provision of dental treatment by unqualified persons
- 35 Repeal of sections 47 and 48
- 36 Substitution of sections 49 and 50
  - 49 Interpretation
  - 50 Cause for disciplinary action

37	Amendment of section 51—Powers of inspectors
38	Repeal of section 53
39	Amendment of section 54—Obligation to report medical unfitness or unprofessional conduct of dental practitioner or dental student
40	Amendment of section 55—Medical fitness of dental practitioner or dental student
41	Amendment of section 56—Inquiries by Board as to matters constituting grounds for disciplinary action
42	Amendment of section 57—Variation or revocation of conditions imposed by Board
43	Amendment of section 59—Provisions as to proceedings before Board
44	Amendment of section 60—Inquiries by Tribunal as to matters constituting grounds for disciplinary action
45	Amendment of section 62—Provisions as to proceedings before Tribunal
46	Amendment of section 63—Powers of Tribunal
47	Substitution of section 64
	64 Costs
	64A Contravention of prohibition order
	64B Register of prohibition orders
48	Amendment of section 65—Power of Tribunal to make rules
49	Amendment of section 66—Right of appeal to Supreme Court
50	Amendment of section 68—Variation or revocation of conditions imposed by Court
51	Amendment of section 69—Interpretation
52	Amendment of section 70—Improper directions to dental practitioners or dental students
53	Amendment of section 71—Offence to contravene conditions of registration
54	Amendment of section 72—Offence to give, offer or accept benefit for referral or recommendation
55	Insertion of section 73A
	73A Statutory declarations
56	Amendment of section 75—Registered person etc must declare interest in prescribed business
57	Substitution of sections 76 and 77
	76 Registered person must report medical unfitness to Board
	77 Report to Board cessation of status as student
58	Amendment of section 78—Registered persons and dental services providers to be indemnified against loss
59	Amendment of section 79—Information relating to claim against registered person or dental services provider to be provided
60	Substitution of section 81
	81 Self-incrimination
61	Substitution of section 83
	83 Vicarious liability for offences
62	Substitution of section 84
	84 Application of fines
63	Amendment of section 85—Board may require medical examination or report
64	Amendment of section 87—Confidentiality
65	Repeal of section 88
66	Amendment of section 89—Service
67	Amendment of section 90—Evidentiary provision
68	Amendment of section 91—Regulations

## Schedule 1—Related amendments and transitional provisions

### Part 1—Preliminary

1	Amendment provisions
---	----------------------

Part 2—Amendment of *Chiropractic and Osteopathy Practice Act 2005*

- 2 Amendment of section 8—Terms and conditions of membership
- 3 Amendment of section 27—Registration of natural persons as chiropractors or osteopaths
- 4 Amendment of section 44—Medical fitness of chiropractor, osteopath, chiropractic student or osteopathy student
- 5 Amendment of section 50—Provisions as to proceedings before Board
- 6 Amendment of section 63—Report to Board of cessation of status as student
- 7 Amendment of section 64—Registered persons and chiropractic or osteopathy services providers to be indemnified against loss

Part 3—Amendment of *Medical Practice Act 2004*

- 8 Amendment of section 6—Composition of Board
- 9 Insertion of section 6A
  - 6A Elections and casual vacancies
- 10 Amendment of section 7—Terms and conditions of membership
- 11 Amendment of section 25—Composition of Tribunal
- 12 Amendment of section 33—Registration of natural persons on general or specialist register
- 13 Amendment of section 50—Medical fitness of medical practitioner or medical student
- 14 Amendment of section 51—Inquiries by Board as to matters constituting grounds for disciplinary action
- 15 Amendment of section 55—Provisions as to proceedings before Board
- 16 Amendment of section 56—Constitution of Tribunal for purpose of proceedings
- 17 Amendment of section 57—Inquiries by Tribunal as to matters constituting grounds for disciplinary action
- 18 Amendment of section 59—Provisions as to proceedings before Tribunal
- 19 Amendment of section 78—Report to Board of cessation of status as student
- 20 Amendment of section 79—Registered persons and medical services providers to be indemnified against loss

Part 4—Amendment of *Occupational Therapy Practice Act 2005*

- 21 Amendment of section 8—Terms and conditions of membership
- 22 Amendment of section 26—Registration of natural persons as occupational therapists
- 23 Amendment of section 41—Medical fitness of occupational therapist or occupational therapy student
- 24 Amendment of section 47—Provisions as to proceedings before Board
- 25 Amendment of section 61—Registered persons and occupational therapy services providers to be indemnified against loss

Part 5—Amendment of *Physiotherapy Practice Act 2005*

- 26 Amendment of section 8—Terms and conditions of membership
- 27 Amendment of section 27—Registration of natural persons as physiotherapists
- 28 Amendment of section 44—Medical fitness of physiotherapist or physiotherapy student
- 29 Amendment of section 50—Provisions as to proceedings before Board
- 30 Amendment of section 63—Report to Board of cessation of status as student
- 31 Amendment of section 64—Registered persons and physiotherapy services providers to be indemnified against loss

Part 6—Amendment of *Podiatry Practice Act 2005*

- 32 Amendment of section 8—Terms and conditions of membership

- 33 Amendment of section 27—Registration of natural persons on general or specialist register
- 34 Amendment of section 44—Medical fitness of podiatrist or podiatry student
- 35 Amendment of section 50—Provisions as to proceedings before Board
- 36 Amendment of section 64—Registered persons and podiatric services providers to be indemnified against loss

## Part 7—Transitional provision

- 37 Removal of companies from register of dental practitioners

## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Dental Practice (Miscellaneous) Amendment Act 2006*.

#### 2—Commencement

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

#### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Dental Practice Act 2001*

#### 10 4—Amendment of long title

Long title—delete "persons registered under this Act" and substitute:  
the persons who provide it

#### 5—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *appropriate register*, (d)—delete paragraph (d)
- 15 (2) Section 3(1)—after the definition of *appropriate register* insert:  
*beneficiary* includes an object of a discretionary trust;
- (3) Section 3(1)—after the definition of *Board* insert:  
*corporate or trustee dental services provider*—see subsection (4);  
*corrective dental appliance* means an oral appliance designed to affect or
- 20 correct oral and maxillofacial development or conditions by moving or influencing bone, teeth, muscle and other tissue of the oro-facial region;
- (4) Section 3(1), definition of *dental practitioner*, (d)—delete paragraph (d)

(5) Section 3(1)—after the definition of *dental practitioner* insert:

*dental services provider* means a person (not being a dental practitioner) who provides dental treatment through the instrumentality of a dental practitioner or dental student but does not include an exempt provider;

5 (6) Section 3(1)—definition of *dental treatment*, (b) and (c)—after "dental prostheses" wherever occurring insert in each case:

and corrective dental appliances

(7) Section 3(1)—after the definition of *equipment* insert:

*exempt provider* means—

10 (a) a recognised hospital, incorporated health centre or private hospital within the meaning of the *South Australian Health Commission Act 1976*; or

(b) any other person declared by the regulations to be an exempt provider for the purposes of this Act;

15 (8) Section 3(1), definition of *health professional*—delete the definition

(9) Section 3(1)—after the definition of *medical practitioner* insert:

*nominated contact address* of a registered person means an address nominated by the person for the purpose of service of notices and documents under this Act;

20 (10) Section 3(1), definitions of *prescribed communicable infection* and *prescribed relative*—delete the definitions

(11) Section 3(1), definition of *putative spouse*—delete the definition and substitute:

*psychologist* means a person who is registered as a psychologist under the law of this State;

25 (12) Section 3(1), definitions of *registered* and *Registrar*—delete the definitions and substitute:

*registered person* means a person who is registered on a register kept under this Act;

30 *Registrar*, except in references to the Registrar of the Tribunal, means the person holding or acting in the office of Registrar of the Board;

(13) Section 3(1)—after the definition of *repealed Act* insert:

*representative body* means a body that is declared by the regulations to be a representative body for the purposes of this Act;

(14) Section 3(1), definition of *spouse*—delete the definition and substitute:

35 *specialty* means a branch of dentistry declared by the Board, by notice in the Gazette, to be a specialty;

(15) Section 3(1), definition of *unprofessional conduct*, (c)(ii)—delete "standards" and substitute:

standard

(16) Section 3—after subsection (2) insert:

(2a) A reference in this Act to ***engaging in conduct*** includes a reference to failing or refusing to engage in conduct.

(17) Section 3—after subsection (3) insert:

5                   (4) For the purposes of this Act—

(a) a ***corporate dental services provider*** is a dental services provider that is a body corporate and a person occupies a ***position of authority*** in such a provider if the person—

(i) is a director of the body corporate; or

10                   (ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or

15                   (iii) manages, or is to manage, the business of the body corporate that consists of the provision of dental treatment; or

(iv) where the body corporate is a proprietary company—is a shareholder in the body corporate; and

20                   (b) a ***trustee dental services provider*** is a person acting as a dental services provider in the capacity of trustee of a trust and a person occupies a ***position of authority*** in such a provider if the person is a trustee or beneficiary of the trust.

25                   (5) For the purposes of this Act, a person occupies a ***position of authority*** in a body corporate other than a corporate dental services provider if the person—

(a) is a director of the body corporate; or

(b) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or

30                   (c) where the body corporate is a proprietary company—is a shareholder in the body corporate.

(6) However—

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

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

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

## **6—Amendment of section 4—Medical fitness to provide dental treatment**

Section 4—delete "and, for that purpose, may have regard to the question of whether the person has a prescribed communicable infection"

## **7—Amendment of section 6—Composition of Board**

- 5 (1) Section 6(1)(a)(ii)—delete "conducted in accordance with the regulations" and substitute:

(see section 6A)

- (2) Section 6(1)(b)(i)—delete "registered advanced dental prosthetist or"

- (3) Section 6(3)—delete subsection (3)

- 10 (4) Section 6(5)—after "nomination" insert:

(if applicable)

## **8—Insertion of section 6A**

After section 6 insert:

### **6A—Elections and casual vacancies**

- 15 (1) An election conducted to choose registered dentists for appointment to the Board must be conducted under the regulations in accordance with principles of proportional representation.
- (2) A person who is a registered dentist at the time the voter's roll is prepared for an election in accordance with the regulations is entitled to vote at the election.
- 20 (3) If an election of a member fails for any reason, the Governor may appoint a registered dentist and the person so appointed will be taken to have been appointed after due election under this section.
- (4) If a casual vacancy occurs in the office of a member chosen at an election, the following rules govern the appointment of a person to fill the vacancy:
- 25 (a) if the vacancy occurs within 12 months after the member's election and at that election a candidate or candidates were excluded, the Governor must appoint the person who was the last excluded candidate at that election;
- 30 (b) if that person is no longer qualified for appointment or is unavailable or unwilling to be appointed or if the vacancy occurs later than 12 months after the member's election, the Governor may appoint a registered dentist nominated by the Minister;
- 35 (c) before nominating a registered dentist for appointment the Minister must consult associations that, in the opinion of the Minister, represent the interests of registered dentists;
- 40 (d) the person appointed holds office for the balance of the term of that person's predecessor.



**9—Amendment of section 7—Terms and conditions of membership**

(1) Section 7—after subsection (1) insert:

(1a) However, a member of the Board may not hold office for consecutive terms that exceed 9 years in total.

5 (2) Section 7(3)—after paragraph (d) insert:

(da) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

(3) Section 7(4)—after "expires" insert:

, or the member resigns,

10 **10—Amendment of section 13—Functions of Board**

(1) Section 13(1)(b)—after "approve" insert:

, after consultation with authorities considered appropriate by the Board,

(2) Section 13(1)(c)—after "determine" insert:

, after consultation with authorities considered appropriate by the Board,

15 (3) Section 13(1)(d) and (e)—delete paragraphs (d) and (e) and substitute:

(d) to establish and maintain the registers contemplated by this Act;

(e) to prepare or endorse, subject to the approval of the Minister, codes of conduct or professional standards for registered persons or codes of conduct for dental services providers;

20 (4) Section 13(1)(g) and (h)—delete paragraphs (g) and (h) and substitute:

(g) to establish administrative processes for handling complaints received against registered persons, dental services providers or persons who occupy positions of authority in corporate or trustee dental services providers (which may include processes under which the registered person, provider or person who occupies the position voluntarily enters into an undertaking);

(h) to provide advice to the Minister as the Board considers appropriate;

(5) Section 13(2)—delete "exercise" and substitute:

perform

30 (6) Section 13(3)—delete subsection (3) and substitute:

(3) If—

(a) a code of conduct or professional standard prepared or endorsed by the Board is approved by the Minister; or

(b) guidelines are prepared or endorsed by the Board,

35 the Board must—

(c) cause a copy of the code, standard or guidelines to be published in the Gazette; and

(d) take reasonable steps to send a copy of the code, standard or guidelines to each registered person or dental services provider to whom it applies; and

(e) ensure that a copy of the code, standard or guidelines is published on the internet and kept available for public inspection without charge during normal office hours at the principal office of the Board,

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

(4) The administrative processes established by the Board for handling complaints received against registered persons, dental services providers or persons who occupy positions of authority in corporate or trustee dental services providers must be designed—

(a) to be fair to both the aggrieved person and the respondent; and

(b) to keep both the aggrieved person and the respondent properly informed about the steps taken by the Board in response to the complaint; and

(c) to provide, where appropriate, opportunities for the clarification of any misapprehension or misunderstanding between the aggrieved person and the respondent; and

(d) to keep both the aggrieved person and the respondent properly informed about the outcome of the processes; and

(e) to take into account the needs of particular classes of persons who may otherwise suffer disadvantage in the conduct of those processes.

### **11—Amendment of section 14—Committees**

Section 14(1)(a)—after "Board" insert:

or the Registrar

### **12—Amendment of section 16—Board's procedures**

Section 16(6)(b)—after "transmission" insert:

, electronic mail

### 13—Substitution of section 17

Section 17—delete the section and substitute:

#### 17—Conflict of interest etc under Public Sector Management Act

5                   A member of the Board will not be taken to have a direct or indirect  
                    interest in a matter for the purposes of the *Public Sector*  
                    *Management Act 1995* by reason only of the fact that the member has  
                    an interest in the matter that is shared in common with dental  
10                   practitioners generally or a substantial section of dental practitioners  
                    in this State.

### 14—Amendment of section 18—Powers of Board in relation to witnesses etc

(1) Section 18(1)(a)—delete "Registrar" second occurring and substitute:

Board

(2) Section 18(1)(b)—delete paragraph (b) and substitute:

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

20                   (i) a written translation of the document or record into English;  
                    and

                    (ii) a certificate signed by a translator approved by the Board  
                    certifying that the translation accurately reproduces in  
                    English the contents of the document or record; or

(3) Section 18(3)(b)—delete paragraph (b) and substitute:

25                   (b) having been served with a summons to produce—

                    (i) a written translation of the document or record into English;  
                    and

30                   (ii) a certificate signed by a translator approved by the Board  
                    certifying that the translation accurately reproduces in  
                    English the contents of the document or record,

                    fails, without reasonable excuse, to comply with the summons; or

(4) Section 18(3)(c)—before "interrupts" insert:

wilfully

### 15—Amendment of section 19—Principles governing hearings

35                   Section 19—after its present contents (now to be designated as subsection (1)) insert:

(2) In proceedings before the Board under this Act, the Board must keep  
the parties to the proceedings properly informed as to the progress  
and outcome of the proceedings.

### 16—Amendment of section 21—Costs

- (1) Section 21(2)—delete "fixed" wherever occurring and substitute in each case:  
awarded
- (2) Section 21(2)—delete "Supreme" and substitute:  
5 District
- (3) Section 21(3)—delete "Subject to this section, costs" and substitute:  
Costs

### 17—Amendment of section 23—Annual report

Section 23(2)—delete subsection (2) and substitute:

- 10 (2) The report must—
- (a) include the following information in relation to the relevant financial year:
- 15 (i) the number and nature of complaints received by the Board against registered persons, dental services providers and persons who occupy positions of authority in corporate or trustee dental services providers;
- 20 (ii) the number and nature of voluntary undertakings given to the Board by registered persons, dental services providers and persons who occupy positions of authority in corporate or trustee dental services providers;
- (iii) the outcomes of proceedings before the Board under Part 5;
- 25 (iv) information prescribed by the regulations; and
- (b) incorporate the audited accounts of the Board for the relevant financial year.

### 18—Amendment of section 25—Composition of Tribunal

- (1) Section 25(1)—delete "appointed by the Governor"
- 30 (2) Section 25(1)(a)—delete paragraph (a) and substitute:
- (a) 1 (the *President*) must be the Chief Judge or another Judge of the District Court; and
- (3) Section 25(1)(b)—delete "nominated by the Minister" and substitute:  
appointed by the Governor on the nomination of the Minister
- 35 (4) Section 25(1)(b)(ii)—delete "registered advanced dental prosthetist or"
- (5) Section 25(1)(c)—delete "nominated by the Minister who are" and substitute:  
appointed by the Governor, on the nomination of the Minister, being persons

**19—Amendment of section 26—Terms and conditions of appointed members**

- (1) Section 26(1)—after "Tribunal" insert:  
appointed by the Governor
- (2) Section 26(2)—delete "a member" and substitute:  
5 an appointed member
- (3) Section 26(3)—delete "a member" and substitute:  
an appointed member
- (4) Section 26(3)—after paragraph (d) insert:  
(da) is disqualified from managing corporations under Chapter 2D  
10 Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
- (5) Section 26(4)—delete "a member" first occurring and substitute:  
an appointed member
- (6) Section 26(4)—after "expires" insert:  
, or the member resigns,

**20—Substitution of section 29**

Section 29—delete the section and substitute:

**29—Registrar of Tribunal**

- (1) There will be a Registrar of the Tribunal.
- (2) The Registrar of the Tribunal will be the person for the time being  
20 holding or acting in the office of Registrar of the District Court.

**29A—Constitution of Tribunal for purpose of proceedings**

- (1) The Tribunal will, for the purpose of hearing and determining  
proceedings, be constituted as follows:
- (a) the President or a Judge of the District Court (who will  
25 preside over the proceedings);
- (b) 1 member of the Tribunal who is a registered dentist;
- (c) if the proceedings relate to a dental practitioner who is not a  
registered dentist—1 member of the Tribunal who is a  
dental practitioner of the same class as that dental  
30 practitioner;
- (d) a member of the Tribunal who is not a dental practitioner.
- (2) The members of the Tribunal referred to in subsection (1)(b), (c) and  
(d) will, for the purposes of any particular proceedings, be selected  
by the person presiding over the proceedings.
- (3) The Tribunal, separately constituted in accordance with this section,  
35 may sit simultaneously for the purpose of hearing and determining  
separate proceedings.

- 5
- (4) If a member of the Tribunal as constituted under this section (other than the person presiding over the proceedings) dies or is for any other reason unable to continue with the proceedings before the Tribunal, the Tribunal constituted of the remaining members may, if the person presiding over the proceedings so determines, continue and complete the proceedings.
- (5) The Tribunal constituted of the person presiding over the proceedings may, sitting alone—
- 10 (a) deal with—
- (i) preliminary, interlocutory or procedural matters; or
- (ii) questions of costs; or
- (iii) questions of law; or
- (b) enter consent orders,
- 15 and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the person considers appropriate.
- (6) Any questions of law or procedure arising before the Tribunal will be determined by the person presiding over the proceedings and any other questions by unanimous or majority decision of the members (unless there is an equal division of opinion, in which case, the decision of the person presiding over the proceedings will be the decision of the Tribunal).
- 20

### **29B—Protection from personal liability**

- 25 (1) No personal liability is incurred for an act or omission by—
- (a) a member of the Tribunal; or
- (b) the Registrar of the Tribunal,
- in good faith in the performance or purported performance of functions or duties under this Act.
- 30 (2) A civil liability that would, but for subsection (1), lie against a person lies instead against the Crown.

### **21—Amendment of heading to Part 4**

Heading to Part 4—after "**Registration**" insert:

**and practice**

### **22—Amendment of section 30—Registers**

- 35 (1) Section 30(2)(a)—delete paragraph (a) and substitute:
- (a) the person's full name and nominated contact address; and
- (2) Section 30(2)—after paragraph (b) insert:
- (ba) in the case of a specialist, the specialty in which the person is registered; and

(3) Section 30(2)(c)—after "condition" insert:

of registration

(4) Section 30(4)(a)—delete "the name of"

(5) Section 30(4)(b)—before subparagraph (i) insert:

(ai) the register from which the person was removed; and

(6) Section 30(4)(b)(i)—delete "person's name" and substitute:

person

(7) Section 30(4)(b)(iii)—delete subparagraph (iii) and substitute:

(iii) if the removal was consequent on suspension—the duration of the suspension; and

(iv) if the person has been disqualified from being registered on a register—the duration of the disqualification;

(8) Section 30(4)(c)—delete "whose name is" and substitute:

who has been

(9) Section 30(6)—delete "3 months" and substitute:

1 month

(10) Section 30(6)—delete "personal, business or registered" and substitute:

name or nominated contact

(11) Section 30(7)—delete "may" and substitute:

must

(12) Section 30(8)—delete subsection (8) and substitute:

(8) The registers must be kept available for inspection by any person during ordinary office hours at the office of the Registrar and the registers or extracts of the registers may be made available to the public by electronic means.

### **23—Amendment of section 31—Authority conferred by registration**

(1) Section 31(b)—delete "prescribed branch of dentistry in respect of" and substitute:

specialty in

(2) Section 31(c) and (d)—delete paragraphs (c) and (d) and substitute:

(c) registration on the register of dental prosthetists authorises the prosthetist to provide dental treatment of the prescribed kind;

(3) Section 31(g)—delete paragraph (g) and substitute:

(g) registration on the register of dental technicians authorises the technician to provide dental treatment consisting of the manufacture of—

(a) dental prostheses; and

- (b) corrective dental appliances prescribed by a registered dentist or registered specialist;

**24—Amendment of section 32—Registration of natural persons as dental practitioners**

- 5 (1) Section 32(1)(c)—delete "the dental treatment" and substitute:  
dental treatment of the kind
- (2) Section 32(1)(d)—delete paragraph (d) and substitute:
  - 10 (d) is, unless exempted by the Board, insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person in connection with the provision of dental treatment as a dental practitioner; and

**25—Repeal of section 33**

Section 33—delete the section

**26—Amendment of section 34—Registration of dental students**

- 15 (1) Section 34(1)—delete subsection (1) and substitute:
  - (1) A person is not entitled to—
    - 20 (a) undertake a course of study that provides qualifications for registration as a dental practitioner under this Act; or
    - (b) provide dental treatment as part of a course of study related to dentistry being undertaken by the person in a place outside the State,unless the person is registered under this section as a dental student.
- (2) Section 34(2)(a)—delete paragraph (a) and substitute:
  - 25 (a) genuinely requires registration on that register—
    - (i) to enable the person to undertake a course of study that provides qualifications for registration as a dental practitioner under this Act; or
    - 30 (ii) to enable the person to provide dental treatment as part of a course of study related to dentistry being undertaken by the person in a place outside the State; and
- (3) Section 34(2)(b)—delete "the dental treatment" and substitute:  
dental treatment of the kind
- (4) Section 34(3)—delete "the dental treatment that would be authorised by his or her" and substitute:  
35 dental treatment of the kind authorised by



**27—Amendment of section 35—Application for registration and provisional registration**

(1) Section 35(2)—delete subsection (2) and substitute:

5 (2) An applicant for registration must, if the Board so requires, provide the Board with specified information to enable the Board to determine the application.

(2) Section 35(4)—after "applicant" insert:

*(provisional registration)*

**28—Amendment of section 36—Removal from register**

10 (1) Section 36(1)—delete "person's name" and substitute:

person

(2) Section 36(2)—delete "the name of"

(3) Section 36(2)(d)—delete paragraph (d) and substitute:

15 (d) who completes, or ceases to be enrolled in, the course of study that formed the basis for the person's registration on that register; or

**29—Amendment of section 37—Reinstatement on register**

(1) Section 37(1)—delete "whose name" and substitute:

who

(2) Section 37(1)(d)(ii)—delete subparagraph (ii) and substitute:

20 (ii) ceasing to be enrolled in the course of study that formed the basis for the person's registration on that register,

(3) Section 37(1)—delete "the reinstatement of his or her name" and substitute:

reinstatement

(4) Section 37(2)—delete "the reinstatement of his or her name" and substitute:

25 reinstatement

(5) Section 37(3)—delete "of the person's name"

(6) Section 37(5)—delete subsection (5) and substitute:

30 (5) An applicant for reinstatement must, if the Board so requires, provide the Board with specified information to enable the Board to determine the application.

(7) Section 37(7)—delete "the name of"

(8) Section 37(8)—delete "the name of"

### 30—Amendment of section 38—Fees and returns

Section 38(2), (3) and (4)—delete subsections (2), (3) and (4) and substitute:

- 5                   (2) A registered person must, in each calendar year before the date fixed  
for that purpose by the Board—
- (a) pay to the Board the annual practice fee fixed under this  
                  Act; and
- (b) furnish the Board with a return, in a form approved by the  
                  Board, containing all information specified in the return  
10 relating to the provision of dental treatment, or the  
undertaking of any course of continuing dental education, by  
the person during the preceding year or to any other matter  
relevant to the person's registration under this Act.
- (3) The Board may, without further notice, remove from the appropriate  
15 register a person who fails to pay the annual practice fee or furnish  
the required return by the due date.

### 31—Substitution of Part 4 Division 3

Part 4 Division 3—delete Division 3 and substitute:

#### **Division 3—Special provisions relating to dental services providers**

#### **39—Information to be given to Board by dental services providers**

- 20                   (1) A dental services provider must—
- (a) in the case of a person who was a dental services provider  
                  immediately before the commencement of this section—  
25 within 60 days of that commencement; and
- (b) in any other case—within 60 days of becoming a dental  
services provider,
- give written notice to the Board of—
- (c) the provider's full name and business or (in the case of a  
30 corporation) registered address; and
- (d) the address of the premises at which the provider provides  
dental treatment; and
- (e) the full names and nominated contact addresses of the dental  
35 practitioners through the instrumentality of whom the  
provider is providing dental treatment; and
- (f) in the case of corporate or trustee dental services provider—  
the full names and addresses of all persons who occupy a  
position of authority in the provider.

(2) The provider must, within 30 days of any change occurring in the particulars required to be given under subsection (1), inform the Board in writing of the change.

(3) A person who contravenes or fails to comply with this section is guilty of an offence.

Maximum penalty: \$10 000.

(4) The Board must keep a record of information provided to the Board under this section available for inspection, on payment of the prescribed fee, by any person during ordinary office hours at the office of the Board and may make the record available to the public by electronic means.

### **32—Substitution of section 43**

Section 43—delete the section and substitute:

#### **43—Illegal holding out concerning limitations or conditions**

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

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

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

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

### **33—Amendment of section 44—Use of certain titles or descriptions prohibited**

Section 44(2) and (4)—delete subsections (2) and (4)

### **34—Amendment of section 45—Restrictions on provision of dental treatment by unqualified persons**

Section 45(1) and (2)—delete subsections (1) and (2) and substitute:

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

(a) the person is a qualified person; or

(b) the person provides the treatment through the instrumentality of a qualified person.

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

(2) Subsection (1) does not apply in relation to dental treatment provided by an unqualified person in prescribed circumstances or pursuant to an exemption under subsection (3).

### **35—Repeal of sections 47 and 48**

Sections 47 and 48—delete the sections

### 36—Substitution of sections 49 and 50

Sections 49 and 50—delete the sections and substitute:

#### 49—Interpretation

In this Part—

- 5
- (a) a reference to *dental services provider* includes a reference to a person who is not but who was, at the relevant time, a dental services provider;
- 10
- (b) a reference to *occupier of a position of authority* includes a reference to a person who is not but who was, at the relevant time, the occupier of a position of authority;
- (c) a reference to *registered person* includes a reference to a person who is not but who was, at the relevant time, a registered person under this Act or the repealed Act.

#### 50—Cause for disciplinary action

- 15
- (1) There is proper cause for disciplinary action against a registered person if—
- (a) the person's registration was improperly obtained; or
- (b) the person is guilty of unprofessional conduct; or
- 20
- (c) the person is for any reason no longer a fit and proper person to be registered on the appropriate register.
- (2) There is proper cause for disciplinary action against a dental services provider if—
- (a) the provider has contravened or failed to comply with a provision of this Act; or
- 25
- (b) there has been, in connection with the provision of dental treatment by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or
- 30
- (c) the provider or any person employed or engaged by the provider has, in connection with the provision of dental treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or
- 35
- (d) the provider is for any reason not a fit and proper person to be a dental services provider; or
- (e) in the case of a corporate or trustee dental services provider, the occupier of a position of authority in the provider—
- (i) has contravened or failed to comply with a provision of this Act; or

- 5
- (ii) has, in connection with the provision of dental treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or
- (iii) is for any reason not a fit and proper person to occupy a position of authority in a corporate or trustee dental services provider.
- 10 (3) There is proper cause for disciplinary action against the occupier of a position of authority in a corporate or trustee dental services provider if—
- (a) the person has contravened or failed to comply with a provision of this Act; or
- 15 (b) the person has, in connection with the provision of dental treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or
- (c) the person is for any reason not a fit and proper person to occupy a position of authority in a corporate or trustee dental services provider; or
- 20 (d) —
- (i) the provider has contravened or failed to comply with a provision of this Act; or
- 25 (ii) there has been, in connection with the provision of dental treatment by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or
- 30 (iii) the provider, or any person employed or engaged by the provider, has, in connection with the provision of dental treatment by the provider, engaged in conduct that would, if the provider or the person were a registered person, constitute unprofessional conduct,
- 35 unless it is proved that the person could not, by the exercise of reasonable care, have prevented the contravention, failure to comply or conduct.

**37—Amendment of section 51—Powers of inspectors**

- (1) Section 51(1)(a)—delete "registered"
- (2) Section 51(1)(b)—delete "of a particular kind"
- (3) Section 51(1)(c)—delete "other than a registered person"
- 40 (4) Section 51(2)(d)—after "inspection" insert:
- , including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process

### **38—Repeal of section 53**

Section 53—delete the section

### **39—Amendment of section 54—Obligation to report medical unfitness or unprofessional conduct of dental practitioner or dental student**

- 5 (1) Section 54(1)—delete subsection (1)
- (2) Section 54(2)(c)—delete "(other than as a specialist or an advanced dental  
prosthodontist)"
- (3) Section 54—after subsection (2) insert:
- 10 (2a) If a dental services provider or exempt provider is of the opinion that  
a dental practitioner or dental student through whom the provider  
provides dental treatment has engaged in unprofessional conduct, the  
provider must submit a written report to the Board setting out the  
provider's reasons for that opinion and any other information  
required by the regulations.
- 15 Maximum penalty: \$10 000.
- (4) Section 54—after subsection (3) insert:
- (4) In this section—
- health professional* means—
- (a) a medical practitioner; or
- 20 (b) a psychologist; or
- (c) any other person who belongs to a profession, or who has an  
occupation, declared by the Board, by notice in the Gazette,  
to be a profession or occupation within the ambit of this  
definition.

### **40—Amendment of section 55—Medical fitness of dental practitioner or dental student**

- 25 (1) Section 55(a)(iii)—delete subparagraph (iii) and substitute:
- (iii) a representative body; or
- (2) Section 55(d) and (e)—delete paragraphs (d) and (e) and substitute:
- 30 (d) impose 1 or both of the following conditions on the person's  
registration:
- (i) a condition restricting the person's right to provide dental  
treatment;
- 35 (ii) a condition requiring the person to undergo counselling or  
treatment or to enter into any other undertaking.

### **41—Amendment of section 56—Inquiries by Board as to matters constituting grounds for disciplinary action**

- (1) Section 56(1)—delete "registered" wherever occurring

(2) Section 56(1)—after "Board" insert:

(in a manner and form approved by the Board)

(3) Section 56(1)(c)—delete paragraph (c) and substitute:

(c) a representative body; or

5 (4) Section 56—after subsection (3) insert:

(3a) Before the Board inquires into the subject matter of a complaint, the Board must give the respondent an opportunity to elect to have the matter dealt with by the Tribunal and, if the respondent so elects, the Board must lay a complaint before the Tribunal relating to matters the subject of, or arising out of, the complaint.

10 (5) Section 56(4)—after "serious" insert:

or that it is otherwise appropriate to do so

(6) Section 56(5)—delete "and the respondent consents to the Board exercising its powers under this subsection"

15 (7) Section 56(5)(c) and (d)—delete paragraphs (c) and (d) and substitute:

(c) if the respondent is a registered person—

(i) impose conditions on the respondent's registration restricting the respondent's right to provide dental treatment;

(ii) suspend the respondent's registration for a period not exceeding 3 months.

20 (8) Section 56(6)—delete subsection (6)

(9) Section 56—after subsection (7) insert:

(7a) The Board may—

(a) fix a period within which a fine imposed under this section must be paid;

(b) on application by a person liable to pay a fine imposed under this section, extend the period within which the fine must be paid.

25 (10) Section 56(8)—delete "subsection (5)" and substitute:

this section

30 (11) Section 56(9)—delete "the name of"

#### **42—Amendment of section 57—Variation or revocation of conditions imposed by Board**

35 Section 57(2)—delete "any association that represents the interests of any class of dental practitioner" and substitute:

representative bodies

### 43—Amendment of section 59—Provisions as to proceedings before Board

- (1) Section 59(1)—delete "Part" and substitute:

Division

- (2) Section 59(1)(b)—delete "(a dental prosthetist and an advanced dental prosthetist are to be regarded as of the same class for the purposes of this paragraph)"

- (3) Section 59(4)—delete subsection (4) and substitute:

- (4) The Board constituted of the person presiding over the proceedings may, sitting alone—

(a) deal with—

- (i) preliminary, interlocutory or procedural matters; or  
(ii) questions of costs; or  
(iii) questions of law; or

(b) enter consent orders,

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

- (4) Section 59(6)—delete "Part" and substitute:

Division

- (5) Section 59(7)(b)—delete paragraph (b) and substitute:

(b) the Board may, if of the opinion that it is desirable to do so in the public interest—

- (i) suspend the registration of the person the subject of the proceedings; or  
(ii) impose conditions on the person's registration restricting the person's right to provide dental treatment,

pending hearing and determination of the proceedings.

- (6) Section 59—after subsection (7) insert:

(7a) If the Board exercises its powers under subsection (7)(b) and the Board terminates the proceedings in order to itself lay a complaint against the respondent before the Tribunal or the respondent elects to have the matter dealt with by the Tribunal, the proceedings will not be taken to be heard and determined for the purposes of that subsection until heard and determined by the Tribunal.

- (7) Section 59—after subsection (9) insert:

(9a) A person who is aggrieved by conduct that is the subject matter of proceedings before the Board under this Division is, subject to any direction of the Board to the contrary, entitled to be present at the hearing of the proceedings.



(8) Section 59(10)(a)—after "State" insert:

or a Territory of Australia

(9) Section 59(11)—delete "Part" and substitute:

Division

5 **44—Amendment of section 60—Inquiries by Tribunal as to matters  
constituting grounds for disciplinary action**

(1) Section 60—before subsection (1) insert:

(a1) A complaint setting out matters that are alleged to constitute grounds  
for disciplinary action against a person may be laid before the  
10 Tribunal by the Board (whether or not a complaint against the person  
has been laid before the Board under section 56).

(2) Section 60(2)—delete subsection (2) and substitute:

(2) If, after conducting an inquiry under this section, the Tribunal is  
satisfied on the balance of probabilities that there is proper cause for  
15 taking disciplinary action against the respondent, the Tribunal may,  
by order, do 1 or more of the following:

(a) censure the respondent;

(b) require the respondent to pay to the Board a fine not  
exceeding \$20 000;

(c) if the respondent is a registered person—

(i) impose conditions on the respondent's registration  
restricting the respondent's right to provide dental  
treatment;

(ii) suspend the respondent's registration on a specified  
25 register for a period not exceeding 1 year;

(iii) cancel the respondent's registration on a specified  
register;

(iv) disqualify the respondent from being registered on a  
specified register;

(d) prohibit the respondent from carrying on business as a  
dental services provider;

(e) prohibit the respondent from occupying a position of  
authority in a corporate or trustee dental services provider.

(3) Section 60(3)(a)—after "disqualification" insert:

or prohibition

(4) Section 60(4)—delete subsection (4)

(5) Section 60(7)—delete "the name of"

**45—Amendment of section 62—Provisions as to proceedings before Tribunal**

- (1) Section 62(2)(b)—delete paragraph (b) and substitute:
- (b) the Tribunal may, if of the opinion that it is desirable to do so in the public interest—
    - (i) suspend the registration of the person the subject of the proceedings; or
    - (ii) impose conditions on the person's registration restricting the person's right to provide dental treatment, pending hearing and determination of the proceedings.
- (2) Section 62—after subsection (2) insert:
- (2a) If the Board has exercised its powers under section 59(7)(b) to suspend the registration of the person the subject of the proceedings or impose conditions on the person's registration, the Tribunal may revoke or vary the suspension or conditions imposed by the Board.

**46—Amendment of section 63—Powers of Tribunal**

- (1) Section 63(1)(a)—after "Tribunal" second occurring insert:  
or the Registrar of the Tribunal
- (2) Section 63(1)(b)—after "Tribunal" second occurring insert:  
or the Registrar of the Tribunal
- (3) Section 63(1)(b)—delete "a written statement in the English language of the contents of the document or record" and substitute:  
—
  - (i) a written translation of the document or record into English; and
  - (ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record; or
- (4) Section 63(2)(b)—delete paragraph (b) and substitute:
  - (b) having been served with a summons to produce—
    - (i) a written translation of the document or record into English; and
    - (ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record,fails, without reasonable excuse, to comply with the summons; or
- (5) Section 63(2)(c)—before "interrupts" insert:  
wilfully
- (6) Section 63(4)—after "Tribunal" last occurring insert:  
or the Registrar of the Tribunal

## **47—Substitution of section 64**

Section 64—delete the section and substitute:

### **64—Costs**

- 5
- (1) The Tribunal may award costs (to be fixed by the Tribunal or taxed by a Master of the District Court) against a party to proceedings before the Tribunal as it thinks fit.
  - (2) Costs awarded by the Tribunal under this section may be recovered as a debt.

### **64A—Contravention of prohibition order**

- 10
- (1) If a person carries on business as a dental services provider in contravention of an order of the Tribunal, the person is guilty of an offence.

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

- 15
- (2) If a person occupies a position of authority in a corporate or trustee dental services provider in contravention of an order of the Tribunal, the person and the provider are each guilty of an offence.

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

- 20
- (3) If a person contravenes or fails to comply with a condition imposed by the Tribunal as to the conduct of the person or the person's business, the person is guilty of an offence.

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

### **64B—Register of prohibition orders**

- 25
- (1) The Registrar of the Tribunal must keep a register of persons who have been prohibited by order of the Tribunal under this Division from carrying on business as a dental services provider or occupying a position of authority in a corporate or trustee dental services provider.

- (2) The register—

(a) must not include any person who is dead;

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

(i) the person's full name and business address; and

(ii) particulars of the order.

- 30
- (3) The Registrar of the Tribunal is responsible to the Tribunal for the form and maintenance of the register.

- 35
- (4) The Registrar of the Tribunal must correct an entry in the register that is not, or has ceased to be, correct.

- 40
- (5) The register must be kept available for inspection by any person during ordinary office hours at the office of the Registrar of the Tribunal and the register may be made available to the public by electronic means.

- (6) A person may, on payment of the prescribed fee, obtain a copy of any part of the register.
- (7) In legal proceedings, a document apparently certified by the Registrar of the Tribunal to be a copy of the register must be accepted as such in the absence of proof to the contrary.

#### 48—Amendment of section 65—Power of Tribunal to make rules

Section 65—after "Tribunal" first occurring insert:

constituted of the President and 2 other members selected by the President

#### 49—Amendment of section 66—Right of appeal to Supreme Court

Section 66—after subsection (1) insert:

- (1a) The appeal lies—
- (a) in the case of an appeal against a decision made by the Tribunal—to the Full Court; or
- (b) in any other case—to the Court constituted of a single Judge.

#### 50—Amendment of section 68—Variation or revocation of conditions imposed by Court

Section 68(2)—delete "any association that represents the interests of any class of dental practitioner" and substitute:

representative bodies

#### 51—Amendment of section 69—Interpretation

- (1) Section 69(1), definition of *beneficiary*—delete the definition
- (2) Section 69(1), definition of *health service*, (a)—delete paragraph (a) and substitute:
- (a) hospital, nursing home or aged care facility services; or
- (3) Section 69(1), definition of *health service*—after paragraph (b) insert:
- (ba) chiropractic, occupational therapy, optometry, osteopathy, physiotherapy, podiatric or psychology services; or
- (4) Section 69(1), definitions of *trust* and *trust or corporate entity*—delete the definitions and substitute:

*prescribed relative*, in relation to a registered person, means a parent, spouse, child, grandchild, brother or sister of the registered person;

*putative spouse*, in relation to a registered person, means a person who is cohabiting with the registered person as the husband or wife *de facto* of the registered person and—

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

*spouse* includes a putative spouse.

- (5) Section 69(2), (3) and (4)—delete subsections (2), (3) and (4)

**52—Amendment of section 70—Improper directions to dental practitioners or dental students**

- 5 (1) Section 70(1)—delete "act unlawfully, improperly, negligently or unfairly in relation to the provision of dental treatment" and substitute:

engage in unprofessional conduct

- (2) Section 70(2)—delete subsection (2) and substitute:

10 (2) If a person who occupies a position of authority in a corporate or trustee dental services provider directs or pressures a dental practitioner or dental student through whom the provider provides dental treatment to engage in unprofessional conduct, the person and the provider are each guilty of an offence.

Maximum penalty: \$75 000.

15 **53—Amendment of section 71—Offence to contravene conditions of registration**

Section 71—delete "by or under this Act in relation to his or her registration under this Act" and substitute:

under this Act on the person's registration

20 **54—Amendment of section 72—Offence to give, offer or accept benefit for referral or recommendation**

- (1) Section 72—delete "dental practitioner" wherever occurring and substitute in each case:

registered person

- 25 (2) Section 72(3), definition of *benefit*—delete the definition and substitute:

*benefit* means money, property or anything else of value.

**55—Insertion of section 73A**

After section 73 insert:

**73A—Statutory declarations**

30 If a person is required under this Act to furnish information to the Board, the Board may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Board.

**56—Amendment of section 75—Registered person etc must declare interest in prescribed business**

- (1) Section 75—delete "dental practitioner" wherever occurring and substitute in each case:

5 registered person

- (2) Section 75—delete "practitioner" wherever occurring and substitute in each case:  
registered person

**57—Substitution of sections 76 and 77**

Sections 76 and 77—delete the sections and substitute:

10 **76—Registered person must report medical unfitness to Board**

If a registered person becomes aware that he or she is or may be medically unfit to provide dental treatment, the registered person must immediately give written notice of that fact to the Board.

Maximum penalty: \$10 000.

15 **77—Report to Board cessation of status as student**

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

20 Maximum penalty: \$5 000.

- (2) A person registered on the register of dental students who completes, or ceases to be enrolled in, the course of study that formed the basis for that registration must cause written notice of that fact to be given to the Board.

25 Maximum penalty: \$1 250.

**58—Amendment of section 78—Registered persons and dental services providers to be indemnified against loss**

Section 78(1)—delete subsection (1) and substitute:

- 30 (1) A registered person or dental services provider must not, unless exempted by the Board, provide dental treatment for fee or reward unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the registered person or dental services provider, as the case may be, in connection with the provision of any such treatment.

35 Maximum penalty: \$10 000.

**59—Amendment of section 79—Information relating to claim against registered person or dental services provider to be provided**

- (1) Section 79—delete "registered person" third occurring and substitute:  
person against whom the claim is made

(2) Section 79—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) If a person has claimed damages or other compensation from a dental services provider for alleged negligence committed by the dental services provider in connection with the provision of dental treatment, the dental services provider must—

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

provide the Board with prescribed information relating to the claim.

Maximum penalty: \$10 000.

### **60—Substitution of section 81**

Section 81—delete the section and substitute:

#### **81—Self-incrimination**

If a person is required to provide information or to produce a document, record or equipment under this Act and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this or any other Act relating to the provision of false or misleading information.

### **61—Substitution of section 83**

Section 83—delete the section and substitute:

#### **83—Vicarious liability for offences**

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

## 62—Substitution of section 84

Section 84—delete the section and substitute:

### 84—Application of fines

A fine imposed for an offence against this Act must be paid to the Board.

## 63—Amendment of section 85—Board may require medical examination or report

Section 85—after subsection (2) insert:

(3) In this section—

*health professional* means—

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

## 64—Amendment of section 87—Confidentiality

Section 87(1)(d)—delete paragraph (d) and substitute:

- (d) to an authority responsible under the law of a place outside this State for the registration or licensing of persons who provide dental treatment, where the information is required for the proper administration of that law; or
- (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

## 65—Repeal of section 88

Section 88—delete the section

## 66—Amendment of section 89—Service

(1) Section 89(b)—after "last known" insert:

nominated contact,

(2) Section 89(b)—after "business or" insert:

(in the case of a corporation)

(3) Section 89(c)—after "last known" insert:

nominated contact,

(4) Section 89(c)—after "business or" insert:

(in the case of a corporation)



(5) Section 89(d)—delete paragraph (d) and substitute:

(d) be transmitted by facsimile transmission or electronic mail to a facsimile number or electronic mail address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

(6) Section 89—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

### **67—Amendment of section 90—Evidentiary provision**

(1) Section 90(1)—delete subsection (1) and substitute:

- (1) In proceedings for an offence against this Act or in disciplinary proceedings under Part 5, an allegation in the complaint—
- (a) that a person named in the complaint is or is not, or was or was not on a specified date, a qualified person;
  - (b) that a person named in the complaint is or is not, or was or was not on a specified date, registered on a specified register;
  - (c) that the registration of a person named to in the complaint is, or was on a specified date, subject to specified conditions;
  - (d) that a person named in the complaint is, or was on a specified date, a dental services provider or exempt provider;
  - (e) that a person named in the complaint is, or was on a specified date, occupying a position of authority in a corporate or trustee dental services provider;
  - (f) that a person named in the complaint is, or was on a specified date, an inspector,

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

(2) Section 90(2)—delete "standards" and substitute:

standard

### **68—Amendment of section 91—Regulations**

(1) Section 91(2)(a)—delete paragraph (a)

(2) Section 91(2)(e), (f) and (g)—delete paragraphs (e), (f) and (g) and substitute:

(e) make any provision with respect to the keeping of a register;

## Schedule 1—Related amendments and transitional provisions

### Part 1—Preliminary

#### 1—Amendment provisions

5 In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Chiropractic and Osteopathy Practice Act 2005*

#### 2—Amendment of section 8—Terms and conditions of membership

Section 8(4)—after paragraph (d) insert:

- 10 (da) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

#### 3—Amendment of section 27—Registration of natural persons as chiropractors or osteopaths

Section 27(1)(d)—Delete "or proceedings under Part 4 against the person"

#### 4—Amendment of section 44—Medical fitness of chiropractor, osteopath, chiropractic student or osteopathy student

Section 44(d) and (e)—delete paragraphs (d) and (e) and substitute:

- 20 (d) impose 1 or both of the following conditions on the person's registration:
- (i) a condition restricting the person's right to provide chiropractic or osteopathy;
  - (ii) a condition requiring the person to undergo counselling or treatment or to enter into any other undertaking.

#### 5—Amendment of section 50—Provisions as to proceedings before Board

25 Section 50(2)(b)—delete "necessary to do so to protect the health and safety of the public" and substitute:

desirable to do so in the public interest

#### 6—Amendment of section 63—Report to Board of cessation of status as student

30 Section 63(1)—delete "completes, or ceases to be enrolled in," and substitute:

ceases to be enrolled in

#### 7—Amendment of section 64—Registered persons and chiropractic or osteopathy services providers to be indemnified against loss

Section 64(1)—delete "or proceedings under Part 4 against the person or provider"

## Part 3—Amendment of *Medical Practice Act 2004*

### 8—Amendment of section 6—Composition of Board

- (1) Section 6(1)(a)(iv)—delete "conducted in accordance with the regulations" and substitute:

5 (see section 6A)

- (2) Section 6(2) and (3)—delete subsections (2) and (3)

- (3) Section 6(8)—after "nomination" insert:

(if applicable)

### 9—Insertion of section 6A

10 After section 6 insert:

#### 6A—Elections and casual vacancies

- (1) An election conducted to choose medical practitioners for appointment to the Board must be conducted under the regulations in accordance with principles of proportional representation.
- 15 (2) A person who is a medical practitioner at the time the voter's roll is prepared for an election in accordance with the regulations is entitled to vote at the election.
- (3) If an election of a member fails for any reason, the Governor may appoint a medical practitioner and the person so appointed will be taken to have been appointed after due election under this section.
- 20 (4) If a casual vacancy occurs in the office of a member chosen at an election, the following rules govern the appointment of a person to fill the vacancy:
- (a) if the vacancy occurs within 12 months after the member's election and at that election a candidate or candidates were excluded, the Governor must appoint the person who was the last excluded candidate at that election;
- 25 (b) if that person is no longer qualified for appointment or is unavailable or unwilling to be appointed or if the vacancy occurs later than 12 months after the member's election, the Governor may appoint a medical practitioner nominated by the Minister;
- 30 (c) before nominating a medical practitioner for appointment the Minister must consult the representative bodies;
- 35 (d) the person appointed holds office for the balance of the term of that person's predecessor.

### 10—Amendment of section 7—Terms and conditions of membership

Section 7(4)—after paragraph (d) insert:

- 40 (da) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

**11—Amendment of section 25—Composition of Tribunal**

Section 25(1)(a)—delete "a Judge of that Court nominated by the Chief Judge" and substitute:

another Judge of the District Court

5 **12—Amendment of section 33—Registration of natural persons on general or specialist register**

Section 33(1)(d)—delete "or proceedings under Part 5 against the person"

**13—Amendment of section 50—Medical fitness of medical practitioner or medical student**

10 Section 50(d) and (e)—delete paragraphs (d) and (e) and substitute:

- (d) impose 1 or both of the following conditions on the person's registration:
  - (i) a condition restricting the person's right to provide medical treatment;
  - (ii) a condition requiring the person to undergo counselling or treatment or to enter into any other undertaking.

**14—Amendment of section 51—Inquiries by Board as to matters constituting grounds for disciplinary action**

Section 51(6)(c)(ii)—delete "1 month" and substitute:

3 months

**15—Amendment of section 55—Provisions as to proceedings before Board**

- (1) Section 55(2)(b)—delete "necessary to do so to protect the health and safety of the public" and substitute:

desirable to do so in the public interest

- (2) Section 55—after subsection (2) insert:

- (2a) If the Board exercises its powers under subsection (2)(b) and the Board terminates the proceedings in order to itself lay a complaint against the respondent before the Tribunal or the respondent elects to have the matter dealt with by the Tribunal, the proceedings will not be taken to be heard and determined for the purposes of that subsection until heard and determined by the Tribunal.

**16—Amendment of section 56—Constitution of Tribunal for purpose of proceedings**

Section 56(1)(a)—delete "nominated by the President to preside over the proceedings" and substitute:

(who will preside over the proceedings)

**17—Amendment of section 57—Inquiries by Tribunal as to matters constituting grounds for disciplinary action**

Section 57—before subsection (1) insert:

- 5 (a1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person may be laid before the Tribunal by the Board (whether or not a complaint against the person has been laid before the Board under section 51).

**18—Amendment of section 59—Provisions as to proceedings before Tribunal**

(1) Section 59(2)(b)—delete paragraph (b) and substitute:

- 10 (b) the Tribunal may, if of the opinion that it is desirable to do so in the public interest—
- (i) suspend the registration of the person the subject of the proceedings; or
- 15 (ii) impose conditions on the person's registration restricting the person's right to provide medical treatment,
- pending hearing and determination of the proceedings.

(2) Section 59—after subsection (2) insert:

- 20 (2a) If the Board has exercised its powers under section 55(2)(b) to suspend the registration of the person the subject of the proceedings or impose conditions on the person's registration, the Tribunal may revoke or vary the suspension or conditions imposed by the Board.

**19—Amendment of section 78—Report to Board of cessation of status as student**

Section 78(1)—delete "completes, or ceases to be enrolled in," and substitute:

- 25 ceases to be enrolled in

**20—Amendment of section 79—Registered persons and medical services providers to be indemnified against loss**

Section 79(1)—delete "or proceedings under Part 5 against the registered person or medical services provider"

30 **Part 4—Amendment of *Occupational Therapy Practice Act 2005***

**21—Amendment of section 8—Terms and conditions of membership**

Section 8(4)—after paragraph (d) insert:

- (da) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

35 **22—Amendment of section 26—Registration of natural persons as occupational therapists**

Section 26(1)(d)—delete "or proceedings under Part 4 against the person"

**23—Amendment of section 41—Medical fitness of occupational therapist or occupational therapy student**

Section 41(d) and (e)—delete paragraphs (d) and (e) and substitute:

- 5                   (d) impose 1 or both of the following conditions on the person's registration:
- (i) a condition restricting the person's right to provide occupational therapy;
- (ii) a condition requiring the person to undergo counselling or treatment or to enter into any other undertaking.

10 **24—Amendment of section 47—Provisions as to proceedings before Board**

Section 47(2)(b)—delete "necessary to do so to protect the health and safety of the public" and substitute:

desirable to do so in the public interest

15 **25—Amendment of section 61—Registered persons and occupational therapy services providers to be indemnified against loss**

Section 61(1)—delete "or proceedings under Part 4 against the person or provider"

**Part 5—Amendment of *Physiotherapy Practice Act 2005***

**26—Amendment of section 8—Terms and conditions of membership**

Section 8(4)—after paragraph (d) insert:

- 20                   (da) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

**27—Amendment of section 27—Registration of natural persons as physiotherapists**

Section 27(1)(d)—delete "or proceedings under Part 4 against the person"

25 **28—Amendment of section 44—Medical fitness of physiotherapist or physiotherapy student**

Section 44(d) and (e)—delete paragraphs (d) and (e) and substitute:

- 30                   (d) impose 1 or both of the following conditions on the person's registration:
- (i) a condition restricting the person's right to provide physiotherapy;
- (ii) a condition requiring the person to undergo counselling or treatment or to enter into any other undertaking.

**29—Amendment of section 50—Provisions as to proceedings before Board**

35                   Section 50(2)(b)—delete "necessary to do so to protect the health and safety of the public" and substitute:

desirable to do so in the public interest

**30—Amendment of section 63—Report to Board of cessation of status as student**

Section 63(1)—delete "completes, or ceases to be enrolled in," and substitute:  
ceases to be enrolled in

5 **31—Amendment of section 64—Registered persons and physiotherapy services providers to be indemnified against loss**

Section 64(1)—delete "or proceedings under Part 4 against the person or provider"

**Part 6—Amendment of *Podiatry Practice Act 2005***

**32—Amendment of section 8—Terms and conditions of membership**

10 Section 8(4)—after paragraph (d) insert:

- (da) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

**33—Amendment of section 27—Registration of natural persons on general or specialist register**

15 Section 27(1)(d)—delete "or proceedings under Part 4 against the person"

**34—Amendment of section 44—Medical fitness of podiatrist or podiatry student**

Section 44(d) and (e)—delete paragraphs (d) and (e) and substitute:

- 20
- (d) impose 1 or both of the following conditions on the person's registration:
    - (i) a condition restricting the person's right to provide podiatric treatment;
    - (ii) a condition requiring the person to undergo counselling or treatment or to enter into any other undertaking.

25 **35—Amendment of section 50—Provisions as to proceedings before Board**

Section 50(2)(b)—delete "necessary to do so to protect the health and safety of the public" and substitute:

desirable to do so in the public interest

30 **36—Amendment of section 64—Registered persons and podiatric services providers to be indemnified against loss**

Section 64(1)—delete "or proceedings under Part 4 against the person or provider"

## **Part 7—Transitional provision**

### **37—Removal of companies from register of dental practitioners**

5

The Registrar of the Dental Board of South Australia will, on the commencement of this Act, remove from the relevant register any company that was registered as a dental practitioner under the *Dental Practice Act 2001* immediately before that commencement.