

DENTAL PROSTHETISTS ACT 1985.

(No. 16 of 1985.)

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DENTAL PROSTHETISTS.

No. 16 of 1985.

AN ACT relating to the licensing of dental
prosthetists and for incidental and other
purposes.

[Assented to 19 April 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Dental Prosthetists Act 1985*. Short title.

2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

Interpreta-
tion.

3. (1) In this Act, unless the contrary intention appears—

“appointed day” means the day fixed by the Minister under subsection (2);

“Commissioner” has the same meaning as the expression has in the Health Act 1911;

“dental prosthetist” means a person to whom a licence is issued under this Act;

“dentist” has the same meaning as the expression has in the Dental Act 1939;

“full artificial denture” means a removable dental prosthesis that replaces all of the natural dentition of the upper jaw or the lower jaw;

“licence” means a licence under section 18 for the time being in force;

“subcommittee” means a subcommittee constituted under section 13;

“the Committee” means the Dental Prosthetists Advisory Committee established under section 5.

(2) The Minister shall, by notice published in the *Government Gazette*, fix a day to be the appointed day for the purposes of the provisions of this Act that refer to the appointed day.

(3) For the purposes of this Act the practice of dental prosthetics shall be taken to mean—

(a) the giving of advice to, or the attendance upon, a person for or in connection with, or in preparation for, the fitting, constructing, inserting, repairing, or renewing of full artificial dentures or mouthguards; and

(b) the fitting, constructing, inserting, repairing, or renewing of full artificial dentures or mouthguards,

but the fitting or inserting of an artificial denture or mouthguard shall not be taken to include any adjustment or alteration to the natural teeth or any tissue of the mouth.

4. (1) Nothing in this Act extends or applies to, or in any manner affects the practice of his profession by, or any rights or privileges of, a person registered under the Dental Act 1939 as a dentist. Application.

(2) Nothing in the Dental Act 1939 applies to or in relation to the practice of dental prosthetics by a dental prosthetist to the extent that the dental prosthetist is authorized by a licence to engage in the practice of dental prosthetics.

PART II—ADMINISTRATION.

5. (1) For the purposes of this Act there shall be established a committee to be known as the Dental Prosthetists Advisory Committee. Dental
Prosthetists
Advisory
Committee.

(2) The Committee shall consist of 8 persons, appointed by the Minister, of whom—

(a) 1 person shall be appointed to be a member and the chairman of the Committee;

(b) 1 person shall be appointed on the nomination of the person occupying the office of Director of Technical and Further Education in the Education Department of the Public Service of the State;

(c) 3 persons shall be dentists of whom—

(i) 1 shall be appointed on the nomination of the Australian Dental Association Inc.; and

(ii) 1 shall be appointed on the nomination of the Commissioner; and

(d) 3 persons shall be dental prosthetists of whom—

(i) 1 shall be appointed on the nomination of the body known as the Dental Laboratory Owners' Association set up under the auspices of the Western Australian Chamber of Commerce and Industry (Inc.);

(ii) 1 shall be appointed on the nomination of the W.A. Dental Technicians and Employees' Union of Workers; and

(iii) 1 shall be appointed on the nomination of the Australian Dental Technicians Society (W.A. Branch).

(3) Before the appointed day a person may be appointed under subsection (2) (d) (i), (ii) or (iii) notwithstanding that he is not a dental prosthetist within the meaning of this Act if, on the coming into operation of this Act, he is actively engaged in the practice of dental prosthetics in the State and has been continuously so engaged for a period of not less than 5 years.

Deputies.

6. (1) The Minister may appoint persons as deputies to act in the respective places of the member who is the chairman of the Committee and the other members of the Committee and may terminate such an appointment at any time.

(2) Where section 5 (2) requires the appointment of a member of the Committee to be on the nomination of a person or body, the appointment of a person as the deputy of the member shall, subject to section 7 (2), be made on the nomination of the person or body by which the member is required under section 5 (2) to be nominated.

(3) A person appointed under subsection (1) is, in the event of the absence from a meeting of the Committee of the member for whom he is the deputy, entitled to attend that meeting and, when so attending, has all the powers, functions, entitlements, and protection of the member for whom he is the deputy.

Nominations.

7. (1) Where a nomination for appointment under section 5 or 6 is required to be made, the nomination shall be made to the Minister within such time after receiving notice from the Minister that such nomination is required as is specified in the notice.

(2) If a nomination is not made in accordance with subsection (1) within the time specified under that subsection the Minister may appoint such person as he thinks fit and a person appointed in accordance with this subsection shall hold office as if he had been nominated as required by section 5 (2) or 6 (2), as the case may be.

8. (1) Subject to this section, a member shall be appointed for such term not exceeding 3 years as is specified in his instrument of appointment and is eligible for reappointment. Tenure of office.

(2) The Minister shall remove from office a person appointed to be a member of the Committee if the person—

- (a) is or becomes an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) becomes in the opinion of the Minister permanently incapable of performing the duties of his office;
- (c) is absent, except with the permission of the Minister, from 3 consecutive meetings of the Committee; or
- (d) being a person appointed under section 5 (2) (c) (i) and (ii), ceases to be a dentist; or being a person appointed under section 5 (2) (d) (i), (ii) and (iii), ceases to be a dental prosthetist or, having been so appointed in accordance with section 5 (3), does not become a dental prosthetist within 1 year after the coming into operation of this Act.

(3) The Minister may remove from office a person appointed to be a member of the Committee—

- (a) on the grounds of neglect of duty, misbehaviour, or incompetence; or
- (b) in the case of a member appointed on the nomination of a person or body, if the person or body nominating that member so requests.

(4) A person appointed to be a member of the Committee may resign his office by writing signed by him addressed to the Minister.

(5) Where a member of the Committee is removed from or resigns his office under this section his office becomes vacant.

Remunera-
tion and
allowances.

9. A member or deputy of a member of the Committee who is not an officer in the Public Service of the State and is not employed by a State instrumentality shall be entitled to such remuneration and allowances as the Minister from time to time determines on the recommendation of the Public Service Board.

Meetings.

10. (1) At a meeting of the Committee 4 members or their respective deputies constitute a quorum of the Committee.

(2) The chairman or his deputy shall preside at a meeting of the Committee but, if neither the chairman nor his deputy is present at the meeting, the members present may appoint one of their number to preside at the meeting.

(3) At a meeting of the Committee each member present may vote on a question and the question shall be decided by a majority of the votes of the members present and voting but if the votes on any question are equally divided the question shall be taken to have been decided in the negative.

(4) The Committee shall—

(a) subject to this Act, conduct proceedings at its meetings in such manner as it from time to time determines and is hereby authorized to determine; and

(b) cause to be recorded and kept true and proper minutes of the proceedings at its meetings.

11. (1) All acts done at a meeting of the Committee shall notwithstanding that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member, be as valid as if that defect had not existed. Saving.

(2) The performance of the functions of the Committee is not affected by reason only of there being a vacancy in the office of a member.

12. (1) The functions of the Committee are— Functions
and powers.

- (a) to liaise with educational authorities in relation to the provision of training courses and facilities for dental prosthetics;
- (b) to conduct or arrange for the conduct of such examinations, if any, as are necessary for the purposes of assessing the theoretical or practical knowledge or capabilities of persons applying for the issue of licences;
- (c) to assess the qualifications of persons applying for the issue of licences;
- (d) to advise the Commissioner in relation to applications for the issue of licences and as to other matters concerning licences; and
- (e) generally to investigate, and advise and make recommendations to the Commissioner on, any matters referred to the Committee by the Commissioner.

(2) The Committee has all such powers, rights, and privileges as may be reasonably necessary for or incidental to the performance of its functions under this Act.

(3) The Committee may co-opt any person having relevant specialized knowledge or experience, but a person so co-opted is not entitled to vote.

(4) The Committee may, by a summons in the prescribed form—

- (a) for the purposes of an inquiry concerning a dental prosthetist, require the attendance at a time and place specified in the summons of the dental prosthetist concerned and any other person who, in the opinion of the Committee, can give evidence or produce documents touching the matter in question or whom the dental prosthetist or another person concerned in the inquiry may desire to call as a witness;
- (b) require the attendance at a time and place specified in the summons of any person making an application for or relating to a licence or of any other person who, in the opinion of the Committee, can give evidence in connection with any such application,

and a summons issued by the Committee under this subsection may also require the production of any documents by the person summoned, and shall have the same effect as a subpoena *ad testificandum* or *duces tecum*, as the case may be, issued by the Supreme Court in a civil action, and obedience to such summons may be enforced by the Supreme Court or a Judge thereof on application by the Committee, in the same manner as in the case of the disobedience or non-observance of a subpoena issued by the Supreme Court.

(5) The Committee may examine on oath or affirmation all persons attending before the Committee as required under subsection (4) or voluntarily attending before it to give evidence, and for such purpose the member of the Committee for the time being presiding may administer an oath or affirmation.

13. (1) The Committee may from time to time, with the approval of the Commissioner, constitute a subcommittee or subcommittees to advise on any aspect of the functions of the Committee, or to carry out such of those functions as may be delegated to that subcommittee under section 14.

Subcom-
mittees.

(2) A subcommittee consists of such persons as the Committee determines, but—

- (a) shall include at least 1 member of the Committee; and
- (b) shall not include a person who is not a member of the Committee unless the approval of the Commissioner has first been obtained to that person being so included.

(3) The Committee may determine the procedures to apply in relation to meetings of a subcommittee including the election of a person to preside at meetings, the appointment of deputies, and the constitution of a quorum.

(4) A subcommittee shall report on its activities at such times as the Committee directs.

(5) Subject to subsection (2), the Committee may dismiss any member of a subcommittee with or without appointing another member of the subcommittee in his place but shall not dismiss as a member of a subcommittee a person who is not a member of the Committee unless the approval of the Commissioner has first been obtained to that person being so dismissed.

14. (1) The Committee may, with the approval of the Commissioner, delegate to a subcommittee such of its functions generally, or such specific matter that is within the functions of the Committee, as may be specified by the Committee and, subject to any limitations that may be imposed by the Committee, the subcommittee may exercise all of the powers of the Committee in relation to any function or matter so delegated except the powers conferred by section 13 and this subsection.

Delegation.

(2) The Committee or a subcommittee that may exercise powers of the Committee may, with the approval of the Commissioner, delegate to a person specified in the instrument of delegation any power so specified other than a power conferred by section 13 or this section.

(3) A delegation under this section—

(a) shall be evidenced in writing; and

(b) shall not be varied or revoked except with the approval of the Commissioner.

Directions
and
references.

15. (1) The Commissioner may, from time to time and either generally or with respect to a particular matter, give directions to the Committee, a subcommittee or any person with respect to the exercise or performance of any powers, functions or duties under this Act, and effect shall be given to any direction so given.

(2) The Commissioner may refer any matter connected with the administration of this Act to the Committee for their consideration or investigation and may have regard to, but is not obliged to act in accordance with, any advice given or recommendation made by the Committee.

PART III—PRACTICE OF DENTAL PROSTHETICS.

Licensed
persons may
practise
dental
prosthetics.

16. Subject to this Act, a person may, notwithstanding that he is not registered under the Dental Act 1939 as a dentist, engage in the practice of dental prosthetics to the extent that he is authorized so to do by a licence.

Application
for licence.

17. A person who is not a dentist may apply to the Commissioner for the issue to him of a licence and an application so made shall be in the prescribed form and shall be accompanied by the prescribed fee.

18. (1) Where the Commissioner receives an application made under and in accordance with section 17 and the Commissioner is satisfied that—

Issue of
licence.

- (a) the applicant is a person of good character and repute and a fit and proper person to hold a licence; and
- (b) the applicant has, upon assessment by examination, gained from an educational authority prescribed for the purposes of this paragraph a qualification so prescribed or is otherwise qualified in a manner considered by the Commissioner to be at least equivalent to a qualification required by the regulations for the purposes of this paragraph,

the Commissioner shall issue to the applicant a licence in the prescribed form.

(2) Where on the coming into operation of this Act a person is actively engaged in the practice of dental prosthetics in the State and has been continuously so engaged for a period of not less than 5 years he shall, for the purposes of dealing with an application made under section 17 within 1 year after the coming into operation of this Act, be taken to be qualified as required by subsection (1) (b) if he undergoes an assessment of proficiency by written, oral or practical examination or any one or more of those kinds of examination as may be required by the person holding the office of Director of Dental Health Services in the Health Department of Western Australia established under the Public Service Act 1978, and performs to the satisfaction of that person in that assessment.

19. Subject to this Act, a licence is of unlimited duration and authorizes the person to whom it is issued to engage in the practice of dental prosthetics to the extent that it relates to the fitting, constructing, inserting, repairing, or renewing of full artificial dentures or mouthguards.

Effect of
licence.

Revocation of
licence and
cancellation
of endorse-
ment.

20. (1) Where the Commissioner, after due inquiry, is satisfied that a dental prosthetist is not a fit and proper person to hold a licence, the Commissioner may, by writing signed by him, revoke the licence of that dental prosthetist.

(2) A person whose licence has been revoked under this section may apply in writing to the Commissioner, at any time after the expiration of a period of 1 year from the revocation for the restoration of his licence, and the Commission may, on payment by the applicant to the Commission of the prescribed fee, restore the licence to that person.

Suspension of
licence or
endorsement.

21. The Commissioner may—

- (a) where he is considering whether or not to revoke a licence under section 20 (1); or
- (b) where the Commissioner, upon considering whether or not to revoke a licence under section 20 (1), is of the opinion that the matter under consideration would be adequately dealt with by imposing a suspension,

suspend the operation of a licence for such period as the Commissioner determines and during the period of such suspension the licence is of no force.

Appeal.

22. (1) Where the Commissioner—

- (a) refuses to issue a licence upon application therefor duly made under this Act;
- (b) suspends the operation of a licence;
- (c) revokes a licence; or
- (d) refuses to restore a licence upon application therefor duly made under this Act,

the Commissioner shall, upon application therefor in writing made by the person affected by his decision within 90 days after he was given notice of the decision, give reasons for the decision, and the person affected may, within 30 days after the reasons are so given, appeal to a Local Court.

(2) Where the Commissioner does not, within 90 days after application therefor is duly made under this Act, issue a licence, or restore a licence, in accordance with the application or give the applicant notice in writing that his application is refused, notice that the application is refused is, for the purposes of subsection (1), taken to have been given at the expiry of that period of 90 days.

(3) A Local Court to which an appeal is made under subsection (1) has jurisdiction to hear and determine the appeal and the appeal shall—

(a) be brought and the proceedings conducted in such manner as may be prescribed by the rules of court in relation to appeals from the decisions of a tribunal, or if in relation to any matter no such rule of court is applicable, in such manner as may be directed by the court; and

(b) unless the court otherwise orders, be in the nature of a rehearing.

(4) A Local Court hearing an appeal under this section may—

(a) confirm, quash, or vary the decision appealed from;

(b) remit the matter to the Commissioner for reconsideration, with or without directions;

(c) make such other order, including an order as to costs, as the court thinks fit,

and effect shall be given to an order made under this subsection.

PART IV—GENERAL.

23. (1) Subject to this Act, the Commissioner shall cause to be compiled and maintained a record showing in respect of each application made under this Act such particulars as may be prescribed.

Records to
be kept.

(2) The record referred to in subsection (1) shall include, in respect of each person to whom a licence is or has been issued—

- (a) the name of that person and, if he carries on the practice of dental prosthetics under a name registered under the Business Names Act 1962, the name so registered;
- (b) the address of that person;
- (c) particulars of the qualifications of that person;
- (d) particulars of any suspension, revocation or restoration of the licence; and
- (e) such other particulars as are prescribed.

(3) Any person may, on payment of the prescribed fee, inspect the record maintained under subsection (1) at any reasonable time.

Offences as
to licensing.

24. A person who—

- (a) makes, or causes to be made, any falsification in any matter relating to the record kept under section 23;
- (b) presents, or causes to be presented, to the Commissioner, the Committee, or a sub-committee any forged, false or counterfeit document or other evidence as to his qualifications or experience;
- (c) personates, or wrongfully represents himself as being, the person referred to in any document presented to the Commissioner, the Committee, or a sub-committee or in any licence issued under this Act; or

- (d) makes or produces, or causes to be made or produced, any false or fraudulent statement or representation, either orally or in writing, for the purpose of procuring the issue of a licence, whether for himself or for any other person under this Act or upon any application, or any investigation or inquiry held under this Act,

commits an offence and is liable to a fine not exceeding \$1 000.

25. (1) Subject to this section and except as otherwise provided in this Act, a person who, not being a person who is licensed as a dental prosthetist under this Act and is thereby authorized so to do in relation to the circumstances in question, in any manner holds himself out as or pretends to be or makes use of any words or any name, title, addition, or description implying or tending to the belief that he is licensed under this Act commits an offence.

Offences relating to the practice of dental prosthetics.

Penalty: \$2 000.

(2) A dental prosthetist shall not carry on the practice of dental prosthetics under any name other than his own, unless he has caused it to be registered under the Business Names Act 1962 and it is the only name under which he carries on the practice of dental prosthetics.

Penalty: \$2 000.

(3) A dental prosthetist shall not in relation to dental prosthetics use or notify on any name-plate or sign or in any advertisement or notice published by or for him any title, words, letters, addition, or similar description, either in full, or in abbreviation or in combination, other than that or those recorded in respect of him under section 23.

Penalty: \$2 000.

Notice
of business
name.

26. A dental prosthetist who carries on or intends to carry on the practice of dental prosthetics under a name registered under the Business Names Act 1962 shall, within 28 days of the name being so registered, notify the Commissioner in writing of that name.

Penalty: \$100.

Legal
proceedings.

27. (1) Any proceedings in respect of an offence against this Act may be taken in the name of the Commissioner by any person appointed for that purpose by the Commissioner.

(2) All proceedings for offences against this Act shall be heard before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

(3) No proof shall be required of the appointment of any member or deputy of a member of the Committee, or any member of a subcommittee, or any person to take proceedings in the name of the Commissioner, but an averment in the complaint that the person is so appointed shall be deemed to be proved in the absence of evidence to the contrary.

(4) It shall not be necessary in any proceedings for an offence against this Act for the prosecution to prove that the defendant received any remuneration or reward in connection with the act, matter, or thing complained of, or that any offence was committed with a view to enabling the defendant to practise dental prosthetics or to claim the privileges conferred by this Act on a dental prosthetist.

(5) When any person is charged under this Act or the Dental Act 1939 with doing any act or thing which it is unlawful for him to perform it shall be sufficient for the prosecution to allege that the person is not entitled under this Act to do that act or thing and the burden of proof that he is so entitled rests on the defendant.

(6) In all courts and before all persons and bodies authorized to receive evidence—

- (a) a certificate in the prescribed form purporting to be issued and signed by the Commissioner and stating that any person was or was not licensed under this Act, or that the licence of a person was suspended, on any date or dates or during any period mentioned in the certificate, is evidence of the matters so stated;
- (b) a copy of or extract from the record kept under section 23, or any writing that purports to reproduce matters entered in that record and recorded or stored by means of any mechanical, electronic or other device, certified as a true copy or as a true extract by the Commissioner, is evidence of the facts appearing therein;
- (c) judicial notice shall be taken of the signature on the certificate and on the copy of or extract from the record kept under section 23, which shall be presumed to have been duly authorized and of the fact that the person by whom the signature was given was so authorized at the time of signing.

(7) Where a body corporate is convicted of an offence against this Act, every person who at the time of the commission of the offence was a director or member of the governing authority of the body corporate or an officer concerned in the management of it and who authorized or permitted the commission of the offence is guilty of the like offence.

(8) A person referred to in subsection (7) may, on the request of the complainant, be convicted on the proceedings on which the body corporate is convicted if the court is satisfied that the person had reasonable notice that the complainant intended to make that request.

Publication.

28. (1) Without limiting the operation of section 30, no action, claim or demand lies against—

- (a) the proprietor, editor, printer or publisher of any newspaper, journal or periodical; or
- (b) the Commissioner, any member of the Committee or a subcommittee, or any other person,

in respect of the publication in good faith of the whole or any part of a report of any investigation, inquiry or findings under this Act concerning any matter touching the practice of dental prosthetics.

(2) Where under this Act the licence of a person is revoked or suspended the Commissioner may notify the revocation, or suspension, and the cause thereof, to—

- (a) any board or authority outside the State by which the person is licensed or registered as a dental prosthetist;
- (b) any body that has granted him a qualification that is recorded under section 23;
- (c) the body known as The Dental Board of Western Australia established under the Dental Act 1939; and
- (d) any person by whom he is employed as a dental prosthetist or any person with whom he practises dental prosthetics in partnership,

and may publish notice of the revocation, cancellation or suspension in the *Government Gazette* or in such other manner as the Commissioner sees fit.

29. (1) Where the licence of a person is suspended or revoked under this Act, that person shall, within 7 days after being notified by the Commissioner thereof, surrender to the Commissioner the form of licence issued to him under this Act.

Return of
licences and
endorse-
ments upon
suspension
or revoca-
tion.

(2) A person who fails to surrender or return to the Commissioner a form of licence as required by subsection (1) commits an offence and is liable to a fine not exceeding \$200, but it is a defence to a prosecution for any offence against this section if the defendant satisfies the court that the failure to surrender or return the form of licence was due to its loss or destruction.

(3) The revocation or suspension of a licence is effective notwithstanding that a person may have failed to surrender or return any form to the Commissioner as required by this section.

30. (1) No liability attaches to the Commissioner, a member of the Committee or a subcommittee or to any other person for any act or omission, by him or on his part or by or on the part of the Committee or a subcommittee, that occurred in good faith and in the exercise, or purported exercise, of his or its powers, or in the discharge, or purported discharge, of his or its duties under this Act.

Indemnity.

(2) Proceedings shall not be commenced or continued against any person in respect of an offence against the Dental Act 1939 that was committed before the appointed day by reason only of the doing of anything that was, or had this Act then been in operation would have been, engaging in the practice of dental prosthetics within the meaning of this Act.

Regulations.

31. The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act and, in particular—

- (a) prescribing forms to be used and fees to be payable under this Act; and
 - (b) regulating the manner in which a dental prosthetist may advertise, display or publicise his practice of dental prosthetics.
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