

Western Australia

Dental Act 1939

Reprinted as at 25 June 1999

Western Australia

Dental Act 1939

CONTENTS

1.	Short title and commencement	1
Part I — Preliminary		
3.	Repeal	2
4.	Interpretation	2
Part II — The Dental Board		
5.	Dental Board established	4
6.	Tenure of office	4
7.	The Board to be a body corporate	4
8.	Proceedings of the Board	5
9.	Resignation	6
10.	Disqualifications	6
11.	Vacancies	6
12.	Governor may remove any member	7
12A.	Remuneration of members	7
13.	Officers of the Board	7
14.	Funds of the Board	7
14A.	Accounts	8
14B.	Audit	8
14C.	Annual report	8
15.	Board may make rules	9
16.	Registrar or other authorized person may take and defend proceedings	10

Part III — The Register

Division 1 — The Register to be kept by the Registrar

- | | | |
|-----|----------------------------------|----|
| 17. | Register to be kept by Registrar | 11 |
| 18. | The Register | 11 |

Division 2 — General

- | | | |
|------|---|----|
| 22. | Register open to inspection | 12 |
| 23. | Withdrawal of name from Register | 12 |
| 24. | Name of person may be re-entered in Register | 13 |
| 25. | Registrar to remove names of deceased persons
from Register | 14 |
| 26. | Registrar to amend Register to ensure accuracy | 14 |
| 27. | List of registered persons to be published
annually | 14 |
| 28. | Copy or extract of Register to be <i>prima facie</i>
evidence | 15 |
| 29. | Certificate of President or Registrar to be <i>prima</i>
<i>facie</i> evidence | 15 |
| 30. | Disciplinary powers | 15 |
| 30A. | Breach of undertaking | 18 |
| 30B. | Inquiry | 18 |
| 31. | Name of person struck off may be restored | 19 |
| 32. | Effect of striking off | 20 |
| 32A. | Effect of suspension | 20 |
| 33. | Appeal | 20 |

Part VI — Registration

- | | | |
|------|---|----|
| 44. | Qualifications for registration as a dentist | 22 |
| 44A. | Temporary registration | 23 |
| 44B. | Qualification for registration as dental therapist | 24 |
| 44C. | Qualifications for registration as dental hygienist | 26 |
| 44D. | Qualifications for registration as school dental
therapist | 27 |

Part VII — Miscellaneous

45.	Board may require attendance at inquiries, etc.	29
46.	Annual license fees	30
47.	Person making default in payment of license fee to be struck off	31
48.	Offences	32
49.	No person other than dentist to use name or title of dentist, etc.	32
50.	Practice of dentistry by certain persons prohibited	33
50A.	Acts which may be performed by dental therapist	35
50B.	Acts which may be performed by a dental hygienist	36
50C.	Supervision of dental therapist or dental hygienist	37
50D.	Acts which may be performed by a school dental therapist	37
50E.	Clinics	38
50F.	Employment of dental therapists and dental hygienists	38
51.	Persons other than dentists prohibited from charging fees	39
51A.	Dental Charges Committee	39
51B.	Dentist may sue for fees	41
51C.	Review of charges	41
51D.	Stay of proceedings	43
52.	Executor of deceased dentists may continue practice	44
53.	Use of certain letters prohibited	44
54.	Provisions relating to name-plates or signs	45
55.	Dentist not to be employed by or agent for any person who is not a dentist	45
56.	Provisions relating to use of firm-names	47
57.	Board may apply for injunction	48
58.	General penalty	48
59.	Proceedings for offences	49
60.	Provisions relating to prosecutions	49
62.	Dentists to be exempt from serving on a jury	50

Contents

63.	Fines etc. payable to Board	50
64.	Regulations	50
65.	Saving of rights of assistants	50

Schedule 1

Schedule 2

Notes

Western Australia

Dental Act 1939

An Act to consolidate and amend the Law relating to dentists and other dental occupations, to regulate the practice of dentistry, and for purposes incidental thereto.

[Long title inserted by No.108 of 1972 s.3; amended by No. 64 of 1996 s.4.]

1. Short title and commencement

This Act may be cited as the *Dental Act 1939*, and shall come into operation on a date to be fixed by proclamation.¹

[2. Repealed by No. 64 of 1996 s.5.]

Part I — Preliminary

3. Repeal

[Omitted under section 7(4)(f) of the Reprints Act 1984.]

4. Interpretation

In this Act, unless the context otherwise requires —

“**Board**” means The Dental Board of Western Australia established by this Act;

“**Committee**” means the Dental Charges Committee established by this Act;

“**company**” means any incorporated body or association, other than the Western Australian College of Dental Science and Perth Dental Hospital Incorporated;

“**dental hygienist**” means a person whose name is entered in the Register as a dental hygienist;

“**dental therapist**” means a person whose name is entered in the Register as a dental therapist;

“**dentist**” means a dentist registered under this Act and whose name is entered in the Register;

“**dentistry**” means and includes any operation on or service in connection with the human teeth or jaws, and the artificial restoration of lost or removed teeth, or jaws and the treatment of diseases or lesions, and the correction of malpositions in human teeth or jaws, and any operation, treatment, or service on or to any person as preparatory to or for the purpose of or in connection with the fitting, insertion, or fixing of artificial teeth, and also every dental service, act, or operation of any kind or nature whatsoever;

The term does not include the mechanical construction of artificial dentures by an artisan employed or engaged by a dentist.

The performance of a single operation, service, or act of dentistry shall be deemed to be practising dentistry;

“legal practitioner” means a person admitted and entitled to practise as a barrister, solicitor, attorney, and proctor of the Supreme Court of Western Australia, or in any one or more of those capacities;

“medical practitioner” means a medical practitioner registered under the *Medical Act 1894*;

“Minister” means the Minister of the Crown charged with the administration of this Act;

“President” means the President of the Board and includes an acting President;

“Register” means the Register to be kept by the Registrar for the purposes of this Act;

“registered” means registered under this Act;

“registered person” means a dentist, dental therapist, dental hygienist or school dental therapist;

“Registrar” means the Registrar appointed under this Act and includes also an acting Registrar;

“rules” means rules made by the Board under the authority of this Act;

“school dental service” means —

- (a) the service established under section 337A of the *Health Act 1911*; and
- (b) a service providing dental care and treatment for pre-school and school children at the Perth Dental Hospital under the *Hospitals and Health Services Act 1927*;

“school dental therapist” means a person whose name is entered in the Register as a school dental therapist.

[Section 4 amended by No. 75 of 1963 s.3; No. 108 of 1972 s.5; No. 28 of 1984 s.15; No. 64 of 1996 ss.6 and 17.]

Part II — The Dental Board

5. Dental Board established

- (1) A Board, to be called “The Dental Board of Western Australia”, is hereby established for the purposes of this Act.
- (2) The Board shall consist of 7 members to be appointed by the Governor of whom 5 shall be dental practitioners.

[Section 5 amended by No. 75 of 1963 s.4; No. 108 of 1972 s.6; No. 94 of 1980 s.3.]

6. Tenure of office

A member of the Board shall hold office for such period not exceeding 3 years as may be specified in his instrument of appointment but shall be eligible for re-appointment.

[Section 6 inserted by No. 94 of 1980 s.4.]

7. The Board to be a body corporate

- (1) The Board shall be a body corporate under the name “The Dental Board of Western Australia” with perpetual succession and a common seal, and shall be capable of suing and being sued in its corporate name and of acquiring holding, and disposing of real and personal property, and of doing and suffering such acts and things as bodies corporate may by law do and suffer.
- (2) The seal of the Board and the signature of the President and of every member of the Board shall be judicially noticed by all courts and persons authorized by law to receive evidence on oath.
- (3) No act or proceeding of the Board shall be invalid or be prejudiced by reason only of the fact that at the time when such act or proceeding is done, taken, or commenced there is a vacancy in the office of any member.

- (4) No act or proceeding of the Board, or by any committee or member of the Board shall be invalid or be prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was some defect in the appointment of any member of the Board, or that the member of the Board was disqualified or not authorized to do or participate in the doing of anything done by the Board or by such member.

[Section 7 amended by No. 94 of 1980 s.5.]

8. Proceedings of the Board

- (1) Any 4 members of the Board shall form a quorum thereof.
- (2) The members of the Board shall appoint one of the dentist members to be the President of the Board, who shall be *ex officio* chairman at all meetings of the Board: Provided that the President of the Dental Board as constituted and functioning immediately prior to the commencement of this Act shall be the President of the first Board established under this Act.
- (3) If by reason of sickness, absence from the State, or any other reason the President is unable to discharge his duties as such President, the members of the Board may appoint one of the dentist members to be acting President, who shall have full right to and may exercise all the powers, functions, and authorities and shall perform all the duties of President until the President resumes his duties.
- (4) At all meetings of the Board the President or, in his absence, the acting President (if any), shall preside. In the absence both of the President and the acting President (if any) from any meeting of the Board the members present shall elect one of their number to be chairman of the meeting.
- (5) Whenever the members are not unanimous as to any matter, such matter shall be decided by the majority of votes of the members present, and the decision so arrived at shall be the decision of the Board.

s. 9

- (6) Each member of the Board shall have one vote, and the chairman at any meeting of the Board, when presiding, shall have a deliberative vote and, in case of an equality of votes, shall also have a casting vote.

9. Resignation

Any member of the Board may resign from the Board by notice in writing signed by him and given to the President, or, when the President is the member resigning, given to the Registrar.

10. Disqualifications

Any person who has his affairs under liquidation or is an undischarged bankrupt or insolvent, or has been convicted of an indictable offence, or is undergoing sentence of imprisonment, or becomes an insane person, shall be disqualified from being appointed or from continuing as a member of the Board.

[Section 10 amended by No. 94 of 1980 s.6.]

11. Vacancies

- (1) The office of a member of the Board shall be vacated —
- (a) if he is or has become disqualified under this Act; or
 - (b) if, without leave obtained from the Board in that behalf, he has been absent from 3 consecutive meetings of the Board; or
 - (c) upon death or resignation; or
 - (d) in the case of a dentist member, when he ceases to be registered as a dentist under this Act.
- (2) Where the office of any member of the Board becomes vacant, the person appointed to fill such vacancy shall hold office only for the unexpired portion of the term of office of his predecessor.

[Section 11 amended by No. 108 of 1972 s.8; No. 94 of 1980 s.7.]

12. Governor may remove any member

The Governor may from time to time remove the members or President of the Board, or any of them, and fill any vacancy caused by removal, death, resignation, illness, absence from the State, or other incapacity.

[Section 12 inserted by No. 94 of 1980 s.8.]

12A. Remuneration of members

A member of the Board, not being a person to whom Part 3 of the *Public Sector Management Act 1994*, applies, shall be entitled to such allowances and remuneration for his services as the Minister from time to time determines.

[Section 12A inserted by No. 108 of 1972 s.10; amended by No. 94 of 1980 s.9; No. 32 of 1994 s.3.]

13. Officers of the Board

- (1) The Board shall appoint a Registrar, and may appoint such examiners and other officers and servants as it considers necessary, to enable the Board to carry out its duties and functions.
- (2) The remuneration of such Registrar and examiners and other officers and servants shall be paid out of the funds of the Board.

14. Funds of the Board

- (1) The funds of the Board shall consist of —
 - (a) the fees prescribed by or under this Act and payable to the Board;
 - (b) grants by the Government of the State (if any), and all gifts and donations made by any person to the Board, but subject to any trusts declared in relation thereto;
 - (c) fines and penalties imposed and recovered upon convictions for offences against this Act; and
 - (d) all the moneys which may come into the hands of the Board under and for the purposes of this Act.

s. 14A

- (2) The funds of the Board may be applied by the Board —
- (a) for any of the purposes of the Act; or
 - (b) the furtherance of dental education and research; or
 - (c) any public purpose connected with the profession of dentistry in this State; or
 - (d) any other purpose approved of by the Minister.

14A. Accounts

- (1) The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Board and shall prepare financial statements in accordance with Australian Accounting Standards.
- (2) The financial statements shall be prepared on an accrual basis unless the Board determines otherwise.

[Section 14A inserted by No. 77 of 1987 s.3.]

14B. Audit

The accounts and financial statements of the Board shall be audited at least once a year, at the expense of the Board, by an auditor appointed by the Board with the prior approval of the Minister.

[Section 14B inserted by No. 77 of 1987 s.3.]

14C. Annual report

- (1) The Board shall on or before 31 December in each year make and submit to the Minister an annual report of its proceedings for the preceding year ending on 30 June together with a copy of the financial statements and the auditor's report.
- (2) The Minister shall cause a copy of each annual report, financial statements and auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.

[Section 14C inserted by No. 77 of 1987 s.3.]

15. Board may make rules

- (1) The Board may, with the approval of the Governor, make rules in relation to all or any of the following matters, namely —
- (a) for regulating the meetings and proceedings of the Board and the conduct of its business;
 - (b) for the custody and use of the common seal of the Board;
 - (c) for enabling the Board to constitute committees and authorizing the delegation to committees of any of the powers of the Board, and for regulating the proceedings of committees;
 - (d) prescribing the examinations to be passed by persons desiring to be registered, and determining the qualifications to be held, and the evidence to be produced by any such persons;
 - (e) for regulating the practice of dentistry and of dental specialties;
 - (ea) for regulating those acts of dentistry performed by a dental therapist, dental hygienist or school dental therapist;
 - (f) for regulating the keeping of the Register;
 - (g) for regulating the manner of making application for and the granting of permits to use or to continue the use of firm names as dentists;
 - (h) for regulating the manner of making to the Board any charge or complaint against or concerning any registered person, and the inquiry by the Board into such charge or complaint;
 - (ha) for regulating the exercise by the Board of its disciplinary powers;
 - (i) prescribing the forms of certificates, licenses, and permits to be granted to registered persons;

s. 16

- (j) prescribing fees to be charged in respect of any matter, proceeding, examination, charge, or complaint made to the Board, and registration and in respect of the granting of any certificate or license under this Act;
 - (k) prescribing the fee or charge to be paid by persons who desire to have their names restored to the Register; and
 - (l) for any other matter which the Governor may declare to be a matter in respect of which rules may be made by the Board under this section.²
- (2) Where by any rule made under subsection (1) a duty or obligation is imposed upon any person to do or not to do any act, matter, or thing specified in such rule, any contravention by such person of such rule shall be a breach of the rule, punishable on conviction by a penalty of a sum not exceeding \$200.
- (3) Nothing in subsection (1) shall affect or limit the power of the Governor under this Act to make regulations for or in respect of any matters mentioned in subsection (1), and where the Board has made a rule and the Governor makes a regulation in respect of the same matter and there exists any inconsistency between such rule and such regulation, the rule shall, to the extent of such inconsistency, be superseded by the regulation and shall be read and have effect subject to the regulation.

[Section 15 amended by No. 75 of 1963 s.5; No. 113 of 1965 s.8; No. 108 of 1972 s.11; No. 19 of 1979 s.2; No. 64 of 1996 s.17.]

16. Registrar or other authorized person may take and defend proceedings

The Registrar, or any other person authorized in that behalf by writing signed by the President of the Board, may, subject to the direction of the Board, commence, carry on, prosecute and defend any action, complaint, information, or other proceeding in the name of the Board.

Part III — The Register

Division 1 — The Register to be kept by the Registrar

17. Register to be kept by Registrar

- (1) The Registrar shall keep a Register recording the names and other particulars of registered persons.
- (2) The Register shall be divided into 4 divisions as follows —
 - (a) Division 1 shall relate to dentists;
 - (b) Division 2 shall relate to dental therapists;
 - (c) Division 3 shall relate to dental hygienists;
 - (d) Division 4 shall relate to school dental therapists.

[Section 17 inserted by No. 64 of 1996 s.7.]

18. The Register

- (1) The Registrar shall enter in the Register the name, address, description, and qualification of every person for the time being and from time to time qualified and required to be registered under this Act, together with particulars of any restriction or limitation on the practice of dentistry or on employment as a dental therapist, dental hygienist or school dental therapist, or of any condition, imposed by the Board in relation to that person under this Act, and such other particulars as may be prescribed.
- (2) Where a dentist satisfies the Board that, in addition to holding the qualification for registration prescribed by or recognised under this Act, he is entitled to and holds another qualification which is or may be incidental to the practice of dentistry, and the Board approves of particulars of such other qualification being entered in the Register in relation to such dentist, the Registrar shall, if so requested by the dentist, enter particulars of such other qualification in the Register accordingly.

- (3) Every registered person shall, on payment of the prescribed fee, be entitled to be issued by the Board with a registration certificate in the prescribed form.
- (4) Where a person is not qualified for registration under the Act as amended but that person has been registered as a dentist in this State and has had his name struck off the Register, the Board may, in its discretion allow the name of that person to be re-entered in the Register.

[Section 18 amended by No. 113 of 1965 s.8; No. 108 of 1972 s.13; No. 94 of 1980 s.10; No. 64 of 1996 s.17.]

[19, 20 and 21. Repealed by No. 75 of 1963 s.9.]

Division 2 — General

22. Register open to inspection

The Register shall be open to inspection by any person at the office of the Registrar on the days and during the hours prescribed, on payment of the prescribed fee.

[Section 22 amended by No. 75 of 1963 s.10; No. 113 of 1965 s.8; No. 108 of 1972 s.14.]

23. Withdrawal of name from Register

- (1) Any person whose name is entered on the Register may, at any time by notice in writing in the prescribed form, signed by him, request the Board to withdraw his name from the Register, and upon receipt of such notice, but subject as hereinafter provided, the Registrar shall, by striking out the same, withdraw the name of such person from the Register.

Provided that, if at the time when notice is given to the Board as aforesaid, an allegation or charge of an offence against or under this Act, or of infamous or disgraceful conduct in a professional respect is pending against the person giving the notice, the name of such person shall not be withdrawn from the Register, until

such allegation or charge has been duly inquired into or heard and has been determined by the Board or the court, as the case may require.

- (2) When the name of any person is withdrawn from the Register he shall cease to be registered and until his name is re-entered in the Register he shall cease to have and enjoy and shall not be entitled to derive or exercise any benefit which accrues to a person by virtue of his name being entered in the Register.

[Section 23 amended by No. 75 of 1963 s.11.]

24. Name of person may be re-entered in Register

- (1) Any person whose name has been withdrawn from the Register, as provided for in section 23, may at any time thereafter make application in the prescribed form to the Board for re-entry of his name in the Register.
- (2) Upon receipt of such application, but subject to this Act and the rules and regulations, the Board shall direct the Registrar, upon payment by the applicant of a sum, to be assessed in accordance with subsection (3), to enter again the name of the applicant in the Register and upon payment by the applicant of such sum the Registrar shall comply with the direction of the Board.
- (2a) If an application for re-entry of the name of a dental therapist, dental hygienist or school dental therapist is made more than 5 years after the name was withdrawn from the Register, the Board shall not direct the Registrar to enter again the name of the person in the Register unless it is satisfied that the person has relevant current knowledge and skills at a level approved by the Board.
- (3) The amount payable by an applicant for the re-entry of his name in the Register shall be the sum of the amount of the current annual license fee that he would have been liable to pay, if his name had not been withdrawn from the Register, and the amount of the fee prescribed for such re-entry.

[Section 24 amended by No. 48 of 1954 s.2; No. 75 of 1963 s.12; No. 64 of 1996 s.8.]

25. Registrar to remove names of deceased persons from Register

When any registered person dies, the Registrar shall, upon being satisfied as to the death of such person, strike or erase the name of such person from the Register.

[Section 25 amended by No. 75 of 1963 s.13; No. 108 of 1972 s.15; No. 64 of 1996 s.17.]

26. Registrar to amend Register to ensure accuracy

Subject to the directions of the Board, the Registrar shall, from time to time, as the occasion requires, make such amendments, additions, alterations and corrections in the Register as may be necessary to make the Register an accurate record of the names, addresses, qualifications and descriptions of all registered persons.

[Section 26 inserted No. 75 of 1963 s.14; amended by No. 108 of 1972 s.16; No. 64 of 1996 s.17.]

27. List of registered persons to be published annually

- (1) Once in every year the Board shall cause to be published in the *Government Gazette* a list of all registered persons.
- (2) As soon as may be after the name of a registered person has been entered in, withdrawn from, or struck off, the Register the Board shall cause notice of that event to be published in the *Government Gazette*.
- (3) Every notification in the *Government Gazette* as aforesaid shall be conclusive evidence of the facts therein stated, unless and until the same is modified by any order of a Judge of the Supreme Court, or by any subsequent notification in the *Government Gazette* by the Board.

[Section 27 amended by No. 75 of 1963 s.15; No. 108 of 1972 s.17; No. 64 of 1996 s.17.]

28. Copy or extract of Register to be *prima facie* evidence

A copy of or an extract from the Register, certified as a true copy or as a true extract by the President or the Registrar, shall in all courts of law be *prima facie* evidence of all the facts appearing therein.

[Section 28 amended by No. 75 of 1963 s.16.]

29. Certificate of President or Registrar to be *prima facie* evidence

A written certificate purporting to be signed by the President or the Registrar stating that at a date or between the dates therein mentioned a person therein named was or was not registered as a dentist, dental therapist, dental hygienist or school dental therapist, as the case may be, shall be *prima facie* evidence of the truth of such statement.

[Section 29 amended by No. 75 of 1963 s.17; No. 108 of 1972 s.18; No. 64 of 1996 s.17.]

30. Disciplinary powers

- (1) The name of any person may be struck off the Register if the Board, after due inquiry, is satisfied that —
 - (a) the registration was obtained by fraud or misrepresentation;
 - (b) before or after registration, the person named was or has been convicted of an offence which, in the opinion of the Board, renders that person unfit to practise as a dentist or to be employed as a dental therapist, dental hygienist or school dental therapist;
 - (c) as the result of a finding of any other authority lawfully exercising outside the State powers similar to those conferred on the Board by this Act, that person has been at any time, and in the opinion of the Board should continue to be, disqualified from carrying on practice as a dentist or from employment as a dental therapist, dental hygienist or school dental therapist;

Dental Act 1939

Part III The Register

Division 2 General

s. 30

- (d) the person is addicted to alcohol or any deleterious drug or suffers from any mental or physical disorder to a degree that renders that person unfit to practise as a dentist or be employed as a dental therapist, dental hygienist or school dental therapist; or
 - (e) that person is guilty of misconduct in a professional respect by reason of carelessness, incompetence, impropriety, infamous conduct, or a breach of the provisions of this Act.
- (1a) Subject to subsection (1b), if the Board, after due inquiry, is satisfied in relation to a person whose name has been withdrawn from or struck off the Register, that, had the name of that person not been so withdrawn from or struck off the Register the Board would have been empowered to impose a penalty on that person under subsection (1) or (3), the Board may —
- (a) censure that person; or
 - (b) order that person to be fined such amount, not exceeding \$2 000, as the Board thinks fit.
- (1b) Nothing in subsection (1a) shall be construed as enabling the Board to impose more than one penalty on a person in respect of the same act or omission.
- (2) Any person may make to the Board an allegation that a person who is or was a registered person is guilty of misconduct in a professional respect, and the Board shall consider all such allegations after affording that person an opportunity of giving an explanation to the Board either in person or in writing.
- (3) Instead of causing the name of any person to be struck off the Register in accordance with subsection (1), where the Board considers that the matter does not in the public interest require that the registered person concerned should be disqualified from practice or employment as such, the Board may —
- (a) order that the particulars entered in the Register in relation to that person be amended, and amend those particulars accordingly;

- (b) censure that person;
 - (c) require that person to give an undertaking, either with or without security, for such period as the Board thinks necessary —
 - (i) in the case of a dentist to comply with such conditions as the Board may impose in relation to that person's practice; or
 - (ii) in the case of a dental therapist, dental hygienist or school dental therapist, to work under supervision, or to complete a specified course of instruction or study;
 - (d) order that person to be fined such an amount, not exceeding \$2 000, as the Board thinks fit;
 - (e) if the person is a dentist, suspend that person from practice generally, or from the performance of any specified operation, service or act of dentistry for a period not exceeding 12 months; or
 - (f) if the person is a dental therapist, dental hygienist or school dental therapist, suspend that person from employment as such generally, or from the performance of any act of dentistry of a kind specified in Schedule 2 for a period not exceeding 12 months.
- (4) The Board may, in any case, in addition to or in lieu of imposing any one or more of the penalties specified in this section, order the person in respect of whom the proceedings concerned were taken to pay such costs and expenses of or incidental to those proceedings as the Board thinks fit.
- (5) Where any fine, costs or expenses are ordered to be paid by any person under this section the amount ordered to be paid shall be recoverable from that person in any court of competent jurisdiction as a debt due to the Board.

[Section 30 inserted by No. 108 of 1972 s.19; amended by No. 19 of 1979 s.3; No. 94 of 1980 s.11; No. 64 of 1996 ss.9 and 17; No. 10 of 1998 s.27(1).]

30A. Breach of undertaking

Where the Board, after due inquiry, is satisfied that a registered person who has given an undertaking to the Board pursuant to section 30 has at any time during the currency of the undertaking been in breach of that undertaking, or failed to comply with any condition imposed, the Board may, in addition to or in lieu of proceeding against that person in accordance with the undertaking, impose on that person such further penalty under section 30 in respect of the matter as a consequence of which the undertaking was required to be given as the Board thinks fit, and may also impose any such penalty in relation to the conduct or omission giving rise to the breach or the failure to comply with the conditions imposed.

[Section 30A inserted by No. 108 of 1972 s.20; amended by No. 10 of 1998 s.27(2).]

30B. Inquiry

- (1) Before making any order under section 30 or 30A in relation to a person who is or was a registered person the Board shall hold an inquiry into the matter and shall give to that person notice of the time and place at which the inquiry is to be held and sufficient details of the matters to be inquired into to enable that person to show cause why the Board should not deal with that person in accordance with the provisions of that section.
- (2) In conducting the inquiry the Board is not bound by rules of evidence or legal procedure and may inform itself in such manner as it thinks fit but shall afford the person concerned an opportunity to be heard, either in person or by solicitor or counsel, and to examine witnesses.
- (3) If so requested by the person concerned, the Board shall sit and conduct the proceedings as if it were an open court.

- (4) Where the Board takes any action under section 30 in relation to a person, the Board shall record the finding on which the decision was based, and its reasons.

[Section 30B inserted by No. 108 of 1972 s.21; amended by No. 94 of 1980 s.12; No. 10 of 1998 s.27(3).]

31. Name of person struck off may be restored

- (1) Any person whose name has been struck off the Register as provided for in section 30 or 30A, may at any time thereafter apply to the Board in the manner prescribed to have his name re-entered in such Register or in the record aforesaid.
- (1a) If an application to re-enter the name of a dental therapist, dental hygienist or school dental therapist in the Register is made more than 5 years after the name was struck off the Register, the Board shall refuse to grant the application unless it is satisfied that the person has relevant current knowledge and skills at a level approved by the Board.
- (2) Subject to subsection (1a), the Board may refuse or grant any application made under subsection (1).
- (3) When the Board grants such an application it shall direct the Registrar, on payment to him by the applicant of a fee or charge, to be assessed in accordance with subsection (4), to re-enter the name of the applicant in the Register, and on payment being made as aforesaid the Registrar shall comply with the direction of the Board.
- (4) The amount payable by an applicant for the re-entry of his name in the Register shall be the sum of the amount of the current annual licence fee that he would have been liable to pay, if his name had not been struck off the Register, and the amount of the fee prescribed for such re-entry.

[Section 31 amended by No. 75 of 1963 s.19; No. 108 of 1972 s.22; No. 64 of 1996 s.10.]

32. Effect of striking off

Where the name of a person has been struck off the Register, that person shall cease to be registered as, and shall be disqualified from practising as, a dentist or from employment as a dental therapist, dental hygienist or school dental therapist, as the case may be, until such time as his name is re-entered in the Register.

[Section 32 inserted by No. 75 of 1963 s.20; amended by No. 108 of 1972 s.23; No. 64 of 1996 s.17.]

32A. Effect of suspension

- (1) Where a registered person is suspended from practice or from employment as a dental therapist, dental hygienist or school dental therapist generally that person shall be deemed not to be registered as, and shall be disqualified from practising as, a dentist or from employment as a dental therapist, dental hygienist or school dental therapist, as the case may be, during the period for which the suspension subsists.
- (2) The Board may, by notice in writing, revoke the suspension and may direct in the notice that the revocation have effect from a date specified in the notice.

[Section 32 inserted by No. 108 of 1972 s.24; amended by No. 64 of 1996 s.17.]

33. Appeal

- (1) Whenever the Board —
 - (a) refuses to register any person; or
 - (b) causes the name of any person to be struck off the Register; or
 - (c) refuses to re-enter in the Register the name of any person whose name has previously been withdrawn from or struck off the Register; or
 - (d) suspends any registered person; or

- (e) imposes any penalty or makes any order as to costs in disciplinary proceedings under this Act,

a person aggrieved may, within 3 months after the date of the decision by the Board, make application in writing to the Board in the prescribed manner for a statement by the Board in writing of its reasons for such decision, and the Board shall, as soon as reasonably may be after receipt of such application, furnish the applicant with the statement aforesaid.

- (2) Within one month after receipt of the statement from the Board as aforesaid, the person aggrieved by the decision by the Board aforesaid may appeal from such decision to the Supreme Court.
- (3) An appeal to the Supreme Court under this section shall be brought and the proceedings shall be had in such manner as may be prescribed by the rules of the Supreme Court, shall be heard and determined by a single Judge and may be in the nature of a re-hearing.

[Section 33 amended by No. 75 of 1963 s.21; No. 108 of 1972 s.25; No. 64 of 1996 s.17.]

[Part IV (sections 34-36). Repealed by No. 75 of 1963 s.22.]

[Part V (sections 37-42). Repealed by No. 75 of 1963 s.22.]

Part VI — Registration

[43. Repealed by No. 108 of 1972 s.26.]

44. Qualifications for registration as a dentist

- (1) No person shall be qualified for registration as a dentist under this Act, unless and until he proves to the satisfaction of the Board, and, if so required after personal attendance before the Board, that —
- [(a) deleted]*
- (b) he has in all respects complied with the requirements of this Act and the rules and regulations;
- (c) he is a person of good character;
- (d) he has gained by examination and holds —
- (i) a primary qualification in dental surgery or dental science of any University of the United Kingdom or of Ireland, New Zealand, or Australia and at the date of his application for registration under this Act is entitled to registration as a dentist in the country where such primary qualification was granted; or
- [(ii), (iii) and (iv) deleted.]*
- (v) the Certificate of Dentistry granted by the body established by the Government of the Commonwealth and known as the Committee on Overseas Professional Qualifications.
- (2) Any person who satisfies the Board that in accordance with the provisions of subsection (1) he is qualified for registration as a dentist under this Act, shall, subject to this Act and the rules and regulations and upon payment of the prescribed registration fee, be entitled to be and shall be registered in the Register kept in accordance with this Act.

- (3) Notwithstanding any other provision of this Act, where a person —
- (a) was not, at the time that his application for registration was made, ordinarily resident in the State; and
 - (b) has not taken up residence and commenced practice in the State within 6 months after the date on which his registration was granted,

the Board may order that his name be erased from the register, and in that event the person shall not, except with the special approval of the Board, be entitled to make a further application for registration or any application for the restoration of his name to the register until the expiration of the period of 5 years commencing on the day on which his application for registration was granted.

[Section 44 amended by No. 13 of 1947 s.2; No. 75 of 1963 s.24; No. 11 of 1967 s.3; No. 108 of 1972 s.27; No. 19 of 1979 s.4; No. 94 of 1980 s.13; No. 10 of 1998 s.27(4).]

44A. Temporary registration

- (1) Any person who is in Western Australia or proposes to come to Western Australia and who satisfies the Board that he proposes to undertake a course in post graduate study or professional practice and training under supervision, or to engage in teaching or research in dental surgery or dental science, may, upon payment of the prescribed fee, be granted by the Board a certificate of temporary registration as a dentist for the purposes of this Act.
- (2) A certificate granted under subsection (1) may be made subject to such limitations and restrictions upon the practice of dentistry by the applicant and to such other conditions as the Board in any particular case specifies in the certificate.
- (3) Every certificate granted under subsection (1) may in the first place be issued for a period of not more than 12 months, but

s. 44B

upon application to the Board during the currency of the certificate may from time to time be renewed for a further period or periods of not more than 12 months in respect of each such application, but so that the maximum period for which a certificate may be in force under this section in respect of any person shall not in the aggregate exceed 3 years.

- (4) The Board may at any time cancel any certificate issued or renewed under subsection (1), or may vary any limitation, restriction or condition to which it was made subject.
- (5) Every person in respect of whom a certificate of temporary registration as a dentist is granted shall, while the certificate remains in force and so long as he does not infringe the restrictions or limitations or contravene the conditions to which it was made subject, be deemed for all the purposes of this Act to be a registered dentist, and his name and such other particulars as the Board considers to be material shall be entered by the Registrar in the Register as a person to whom temporary registration has been granted.

[Section 44A inserted by No. 108 of 1972 s.28.]

44B. Qualification for registration as dental therapist

[(1) repealed]

- (2) A person shall be qualified for registration as a dental therapist under this Act, if he proves to the satisfaction of the Board, and, if so required after personal attendance before the Board, that —

[(a) deleted]

- (b) he has in all respects complied with the requirements of this Act and the rules and regulations;
- (c) he is a person of good character; and
- (d) he meets the requirements of subsection (3).

- (3) The person must —
- (a) not more than 5 years before applying for registration —
 - (i) have completed the course of training, and passed the examinations, prescribed for the purposes of this paragraph; or
 - (ii) have completed a course of study and professional practice and training as a dental therapist approved by the Board;

or

 - (b) more than 5 years before applying for registration —
 - (i) have completed the course of training, and passed the examinations, prescribed for the purposes of this paragraph; or
 - (ii) have completed a course of study and professional practice and training as a dental therapist approved by the Board,
and have current knowledge and skills in dental therapy at a level approved by the Board.
- (3a) The Board may require a person who comes within subsection (3)(b) to complete such further or other training as the Board requires.
- (4) Any person who satisfies the Board that in accordance with the provisions of this section he is qualified for registration as a dental therapist under this Act, shall, subject to this Act and the rules and regulations and upon payment of the prescribed fee, be entitled to be and shall be registered in the Register kept in accordance with this Act.

[Section 44B inserted by No. 108 of 1972 s.29; amended by No. 19 of 1979 s.5; No. 94 of 1980 s.14; No. 64 of 1996 s.11.]

s. 44C

44C. Qualifications for registration as dental hygienist

- (1) A person is qualified for registration as a dental hygienist if that person proves to the satisfaction of the Board that the person —
 - (a) has in all respects complied with the requirements of this Act and the rules and regulations;
 - (b) is a person of good character; and
 - (c) meets the requirements of subsection (2).
- (2) The person must —
 - (a) not more than 5 years before applying for registration —
 - (i) have completed the course of training, and passed the examinations, prescribed for the purposes of this paragraph; or
 - (ii) have completed a course of study and professional practice and training as a dental hygienist approved by the Board;
 - or
 - (b) more than 5 years before applying for registration —
 - (i) have completed the course of training, and passed the examinations, prescribed for the purposes of this paragraph; or
 - (ii) have completed a course of study and professional practice and training as a dental hygienist approved by the Board,
and have current knowledge and skills in dental hygiene at a level approved by the Board.
- (3) The Board may require a person who comes within subsection (2)(b) to complete such further or other training as the Board requires.
- (4) A person who satisfies the Board that immediately before the coming into operation of the *Dental Amendment Act 1996*¹ that person held the qualifications then prescribed as qualifications

for registration as a dental therapist, may, subject to the completion of such further or other training as the Board requires, be dealt with by the Board under this section as if the person were a person who meets the requirements of subsection (2).

- (5) A person who satisfies the Board that that person is qualified for registration as a dental hygienist is, subject to this Act and the rules and regulations and upon payment of the prescribed fee, entitled to be and shall be registered as a dental hygienist.
- (6) The Board may refuse the application of a person who is required under section 45(1)(b) to appear before the Board and fails to do so.

[Section 44C inserted by No. 64 of 1996 s.12.]

44D. Qualifications for registration as school dental therapist

- (1) A person is qualified for registration as a school dental therapist if that person proves to the satisfaction of the Board that the person —
 - (a) has in all respects complied with the requirements of this Act and the rules and regulations;
 - (b) is a person of good character; and
 - (c) meets the requirements of subsection (2).
 - (2) The person must —
 - (a) not more than 5 years before applying for registration —
 - (i) have completed the course of training, and passed the examinations, prescribed for the purposes of this paragraph; or
 - (ii) have completed a course of study and professional practice and training as a school dental therapist approved by the Board;
- or

s. 44D

- (b) more than 5 years before applying for registration —
 - (i) have completed the course of training, and passed the examinations, prescribed for the purposes of this paragraph; or
 - (ii) have completed a course of study and professional practice and training as a school dental therapist approved by the Board, and have current knowledge and skills in school dental therapy at a level approved by the Board.
- (3) The Board may require a person who comes within subsection (2)(b) to complete such further or other training as the Board requires.
- (4) A person who satisfies the Board that immediately before the coming into operation of the *Dental Amendment Act 1996*¹ that person was qualified under section 337A of the *Health Act 1911* to be a school dental therapist may, subject to the completion of such further or other training as the Board requires, be dealt with by the Board under this section as if the person were a person who meets the requirements of subsection (2).
- (5) A person who satisfies the Board that that person is qualified for registration as a school dental therapist is, subject to this Act and the rules and regulations and upon payment of the prescribed fee, entitled to be and shall be registered as a school dental therapist.
- (6) The Board may refuse the application of a person who is required under section 45(1)(b) to appear before the Board and fails to do so.

[Section 44D inserted by No. 64 of 1996 s.12.]

Part VII — Miscellaneous

45. Board may require attendance at inquiries, etc.

- (1) The Board may by a summons in the prescribed form require —
 - (a) the attendance of a registered person at any proceedings held under section 30B which concern that person, and may also require the attendance at any such proceedings of any other person who, in the opinion of the Board, can give evidence or produce documents touching the matter in question, or whom the complainant (if any) or the registered person may desire to call as a witness; and
 - (b) the attendance before the Board of any applicant for registration or for recognition as provided for by this Act, and of any other person who, in the opinion of the Board, can give evidence in connection with the application of any such applicant.
- (2) The Board may examine on oath or affirmation all persons attending before the Board pursuant to the requisition of the Board under this section or voluntarily attending to give evidence, and for such purpose the President or other member acting as chairman of the Board during the proceedings by the Board or during the meeting of the Board at which any person is required to give evidence or desires to give evidence may administer an oath or affirmation.
- (3) Every summons issued by the Board to any person under this section 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 the obedience to such summons may be enforced by the Supreme Court or a Judge thereof on application by the Board, in the same manner as in the case of the disobedience or non-observance of a subpoena issued by the said Court.

[Section 45 amended by No. 75 of 1963 s.25; No. 108 of 1972 s.30; No. 64 of 1996 s.17.]

s. 46

46. Annual license fees

- (1) No registered person shall practise dentistry or act as a dental therapist, dental hygienist or school dental therapist —
- (a) unless that person holds a license so to do issued by the Board;
 - (b) so as to infringe any restriction or limitation, or to contravene any condition imposed upon that person by the Board.

Penalty: \$1 000.

- (2) Every person whose name appears in the Register shall be entitled to a license either as a dentist, dental therapist, dental hygienist or school dental therapist, as the case may require, but whether such person applies to the Board for such license or not, he shall, whilst his name continues to appear in the said Register be liable to pay and shall pay the prescribed annual license fee.

[(3) repealed by No. 108 of 1972 s.31.]

[(4) repealed by No. 75 of 1963 s.26.]

- (5) Licenses issued under this section shall be in the prescribed form and shall be signed by the Registrar.
- (6) Subject as hereinafter provided, licenses issued under this section shall have effect for one year ending on 31 December in each year.

Provided that —

- [(i) deleted]*
 - (ii) licenses issued under this section at any time of a year shall have effect only until 31 December next following the issue thereof.
- (7) The license fees payable under this section shall, subject to subsection (6), be due and payable during the month of January in each and every year, or within one month after the name of

the person is entered in the Register, and when such fee is paid within the time hereinbefore prescribed for the payment thereof, such payment shall be deemed to have been made as from and including the first day of the month of January in which it is paid or as from and including the date of registration.

- (8) A registered person when remitting to the Board the license fee payable under this section, shall also furnish to the Board in writing such particulars concerning the nature of his practice, the place or places at which he conducts his practice and his registration and qualifications as are prescribed, to enable the Board to plan education programmes and make manpower projections.

[Section 46 amended by No. 48 of 1954 s.3; No. 75 of 1963 s.26; No. 113 of 1965, s.8; No. 108 of 1972 s.31; No. 19 of 1979 s.6; No. 94 of 1980 s.15; No. 64 of 1996 s.17.]

47. Person making default in payment of license fee to be struck off

- (1) Where a person fails or neglects to pay the license fee provided, within the time prescribed, by section 46, his name shall, forthwith upon his making default, be struck off the Register.
- (2) Subject to subsection (3), where the name of a registered person is struck off the Register pursuant to this section, the Board shall, upon the receipt of an application in writing for the restoration, signed by that person together with the amount of any prescribed penalty and of the fee prescribed for the re-entry, restore his name to the Register.
- (3) If the application for restoration of the name of a dental therapist, dental hygienist or school dental therapist to the Register is made more than 5 years after the name is struck off, the Board shall not restore the name to the Register unless it is satisfied that the applicant has relevant current knowledge and skills at a level approved by the Board.

[Section 47 inserted by No. 75 of 1963 s.27; amended by No. 108 of 1972 s.32; No. 64 of 1996 s.13.]

48. Offences

Any person who —

- (a) makes or causes to be made any falsification in any matter relating to the Register; or
- (b) presents or causes to be presented to the Board or the Registrar any forged, false or counterfeit certificate, diploma, degree, license or other document; or
- (c) personates or wrongfully represents himself as being the person referred to in any certificate, diploma, degree, license, or other document; or
- (d) procures or attempts to procure himself or any other person to be registered under this Act by making or producing or causing to be made or produced any false or fraudulent declaration or representation, either verbally or in writing; or
- (e) makes any false statement upon any inquiry or examination held or conducted by the Board in exercise of a power in that behalf conferred by this Act; or
- (f) makes any false statement in any declaration required by the Board under this Act or the rules or regulations,

shall be guilty of a misdemeanour and shall on conviction be liable to imprisonment for a term not exceeding 2 years.

[Section 48 amended by No. 75 of 1963 s.28.]

49. No person other than dentist to use name or title of dentist, etc.

- (1) No person other than a dentist, and no company, shall take or use, or by inference adopt or otherwise hold himself or itself out as being entitled to use the name or title of “dentist”, “dental surgeon”, “dental practitioner”, “mechanical dentist”, or any other name, title, word, letters, addition, or description implying or tending to the belief that he or such company is registered as a dentist under this Act, or is entitled to practise dentistry, or is carrying on alone or with others the practice of dentistry.

(2) No company and no dentist or person other than a person or persons authorized to use a firm-name by section 56 shall take or use or have attached to or exhibited at any place the description “dental company”, “dental institute”, “dental hospital”, “dental college”, “college of dentistry”, “school of dentistry”, or any other description in which the word “dental” or “dentistry” appears that implies or tends to the belief that the business or practice of dentistry is carried on in that place but this subsection does not prevent a dentist from taking, using, or having attached to or exhibited at any place a description referred to in subsection (1).

(3) Any person who in any respect contravenes any of the provisions of this section shall be guilty of an offence.

Penalty: First offence — \$100; any subsequent offence — \$500.

[Section 49 amended by No. 113 of 1965 s.8; No. 19 of 1979 s.7; No. 94 of 1980 s.16.]

50. Practice of dentistry by certain persons prohibited

(1) No person, other than a dentist, and no company shall —

- (a) practise dentistry or perform any act of dentistry; or
- (b) hold himself, or hold itself, out, either directly or by implication, as practising, or being prepared to practise, dentistry in any of its branches.

(2) This section does not apply to —

- (a) a person who, without reward or the expectation of reward, extracts a tooth or teeth, for the immediate relief of pain, at a place not less than 50 miles by the shortest road journey from the nearest place of business of a dentist;
- (b) a medical practitioner who performs an act of dentistry, not being —
 - (i) the preparation of a cavity in a tooth, with a view to the permanent restoration of the tooth; or

s. 50

- (ii) the fitting, insertion or fixing of artificial teeth, the artificial restoration of lost teeth or the mechanical construction of artificial dentures;
 - (c) a student of the Dental School of the University of Western Australia, under the direction of a dentist, within that University or in a place which is approved by that University for the teaching of dental students; or
 - (d) any person visiting the State, as an official dental clinician, for the purpose of giving professional instruction and who, although not being registered, or entitled to be registered, under this Act, performs acts of dentistry, in the course of giving the professional instruction, for a period not exceeding 12 months, pursuant to the permission in writing of the Board, which permission the Board is by, and subject to, this paragraph authorized to give; or
 - (e) a student who, while undertaking a prescribed course of training, performs an act of dentistry under the direction of a dentist;
 - (f) a dental therapist who performs under the direction and control of a dentist an act of dentistry authorized under section 50A;
 - (g) a dental hygienist who performs under the direction and control of a dentist an act of dentistry authorized under section 50B; or
 - (h) a school dental therapist who performs an act of dentistry authorized under section 50D.
- (3) Every person who, or company that, contravenes the provisions of this section commits an offence.

Penalty: For a first offence, \$400; and, for any subsequent offence, \$2 000.

[Section 50 inserted by No. 75 of 1963 s.29; amended by No. 113 of 1965 s.8; No. 98 of 1970 s.3; No. 108 of 1972 s.33; No. 19 of 1979 s.8; No. 64 of 1996 s.14.]

50A. Acts which may be performed by dental therapist

- (1) This section applies to a dental therapist who is employed —
 - (a) by a dentist; or
 - (b) to perform acts of dentistry in —
 - (i) a hospital within the meaning of the *Hospitals and Health Services Act 1927*;
 - (ii) a university or tertiary educational authority established under any written law; or
 - (iii) the department of the Public Service principally assisting the Minister in the administration of this Act.

- (2) Subject to subsection (3) and any condition, restriction or limitation imposed by the Board, a dental therapist to whom this section applies may, under the direction and control of a dentist and for the purpose of assisting that dentist in the prevention, control, or treatment, of dental disease —
 - (a) undertake the acts of dentistry specified in Parts 1, 2, 4, 5 and 6 of Schedule 2; and
 - (b) if the dental therapist —
 - (i) has the qualifications prescribed for the purposes of this paragraph;
 - (ii) has completed a course of study and training approved by the Board for the purposes of this paragraph; or
 - (iii) is, in the opinion of the Board, by reason of experience in undertaking those acts, competent to undertake the acts of dentistry specified in Part 3 of Schedule 2,

undertake the acts of dentistry specified in Part 3 of Schedule 2.

s. 50B

- (3) A dental therapist shall not undertake the acts of dentistry referred to in subsection (2)(b) unless the dental therapist has the written approval of the Board to do so.

[Section 50A inserted by No. 64 of 1996 s.15.]

50B. Acts which may be performed by a dental hygienist

- (1) This section applies to a dental hygienist who is employed —
- (a) by a dentist; or
 - (b) to perform acts of dentistry in —
 - (i) a hospital within the meaning of the *Hospitals and Health Services Act 1927*;
 - (ii) a university or tertiary educational authority established under any written law; or
 - (iii) the department of the Public Service principally assisting the Minister in the administration of this Act.
- (2) Subject to any condition, restriction or limitation imposed by the Board, a dental hygienist to whom this section applies may, under the direction and control of a dentist and for the purpose of assisting that dentist in the prevention, control, or treatment, of dental disease —
- (a) undertake the acts of dentistry specified in Parts 1 and 6 of Schedule 2;
 - (b) if the dental hygienist —
 - (i) has the qualifications prescribed for the purposes of this paragraph; or
 - (ii) has completed a course of study and training approved by the Board for the purposes of this paragraph,undertake the acts of dentistry specified in Part 2 of Schedule 2; and

- (c) if the dental hygienist —
 - (i) has the qualifications prescribed for the purposes of this paragraph; or
 - (ii) has completed a course of study and training approved by the Board for the purposes of this paragraph,undertake the acts of dentistry specified in Part 3 of Schedule 2.

[Section 50B inserted by No. 64 of 1996 s.15.]

50C. Supervision of dental therapist or dental hygienist

- (1) Where an act of dentistry is to be undertaken by a dental therapist or dental hygienist, the dentist under whose direction and control the act is to be undertaken shall —
 - (a) examine the patient —
 - (i) before the treatment commences; and
 - (ii) after the treatment within such time as is prescribed;and
 - (b) if not in full-time attendance, remain reasonably available for consultation.
- (2) A dentist complies with subsection (1)(b) if the dentist, or another dentist nominated by him, is available to render assistance to the dental therapist or dental hygienist if such assistance is required by the dental therapist or dental hygienist.

[Section 50C inserted by No. 64 of 1996 s.15.]

50D. Acts which may be performed by a school dental therapist

- (1) This section applies to a school dental therapist who is employed to carry out acts of dentistry for a school dental service.

s. 50E

- (2) Subject to any condition, restriction or limitation imposed by the Board and the regulations made under section 337A(4) of the *Health Act 1911*, a school dental therapist to whom this section applies may for the purposes of the school dental service —
- (a) undertake the acts of dentistry specified in Parts 1, 2, 4 and 7 of Schedule 2; and
 - (b) if the school dental therapist —
 - (i) has the qualifications prescribed for the purposes of this paragraph; or
 - (ii) has completed a course of study and training approved by the Board for the purposes of this paragraph,undertake the acts of dentistry specified in Part 3 of Schedule 2.

[Section 50D inserted by No. 64 of 1996 s.15.]

50E. Clinics

- (1) In this section —
- “clinic”** means any premises —
- (a) under the control of a dentist;
 - (b) at which the dentist employs dental therapists and dental hygienists or either of them on a regular basis; and
 - (c) at which a dentist is not always in attendance when dental acts are undertaken on the premises.
- (2) A dentist shall not operate more than 2 clinics.

[Section 50E inserted by No. 64 of 1996 s.15.]

50F. Employment of dental therapists and dental hygienists

- (1) In this section —
- “department”** means the department of the Public Service principally assisting the Minister in the administration of this Act.

- (2) A dentist shall not employ dental therapists and dental hygienists or either of them for hours that exceed in the aggregate in any week the equivalent hours of 2 full-time employees.
- (3) Dental therapists and dental hygienists employed to perform acts of dentistry in the department shall not be employed in any higher proportion than 2 dental therapists or dental hygienists, or the part-time equivalent, for each dentist employed to perform acts of dentistry in the department.
- (4) The proportion specified in subsection (3) may be exceeded if necessary for the purposes of the school dental service.

[Section 50F inserted by No. 64 of 1996 s.15.]

51. Persons other than dentists prohibited from charging fees

Subject as hereinafter provided no person other than a dentist, and no company, shall be entitled to charge or to sue in any court for the recovery of any fee or other remuneration, or to counterclaim or set off any such fee or other remuneration in respect of any act of dentistry performed by him or it:

Provided that this section shall not apply —

- (a) to any person or persons practising dentistry under a firm-name under the authority of section 56; or
- (b) to any medical practitioner who performs an act of dentistry as authorized by section 50(2)(b).

[Section 51 amended by No. 11 of 1967 s.4.]

51A. Dental Charges Committee

- (1) For the purposes of this Act there shall be established a committee to be known as the Dental Charges Committee.
- (2) The Committee shall consist of —
 - (a) an officer of the Public Service of the State having professional qualifications in dentistry who is nominated in writing by the Permanent Head³ and who shall be chairman; and

s. 51A

- (b) 2 other members appointed by the Governor, of whom —
 - (i) one shall be a dentist in private practice nominated by the Australian Dental Association (W.A. Branch) Inc.;
 - (ii) one shall be a qualified accountant nominated by the Minister.
- (3) A member may be appointed to hold office for any term not exceeding 3 years, is eligible for re-appointment, and shall hold and vacate office in accordance with the terms of the instrument under which he is appointed.
- (4) The Governor may appoint a person to be a deputy of a member, and a reference in this section to a member shall be construed as a reference to a deputy taking the place of that member in the absence of that member from any meeting.
- (5) A member, not being a person to whom the *Public Service Act 1904*⁴, applies, may be paid such remuneration and allowances as the Governor determines.
- (6) If a member —
 - (a) becomes permanently incapable of performing his duties as a member;
 - (b) resigns his office by writing under his hand addressed to the Governor;
 - (c) absents himself, except on leave duly approved by the Minister, from 3 consecutive meetings,the office of that member becomes vacant.
- (7) The Committee shall hold meetings at such times and places as it thinks fit, but may be convened at any time by the Minister.
- (8) The proceedings of the Committee shall not be invalidated by reason only of there being a vacancy in the office of a member or there being a defect in the appointment of any member.

- (9) At a meeting of the Committee —
- (a) 3 members form a quorum;
 - (b) if the chairman is absent the members present shall elect one of their number to preside at that meeting and while so presiding that member is deemed to be the chairman;
 - (c) any question arising shall be determined by a majority of the votes of the members present;
 - (d) the member presiding has a deliberative vote only.
- (10) Subject to this Act, the Committee may regulate its procedure in such manner as it thinks fit.

[Section 51A inserted by No. 108 of 1972 s.35; amended by No. 63 of 1981 s.4.]

51B. Dentist may sue for fees

A dentist shall be entitled to sue in any court of competent jurisdiction for the recovery of his fees or other remuneration for his professional services in dentistry or in the performance of any dental operation or for any dental attendance or advice, and it shall be sufficient to state in the particulars of demand the words “for dental services” which shall include every demand for any act of dentistry, attendance and advice and for any articles supplied by the plaintiff to the defendant for dental purposes.

[Section 51B inserted by No. 108 of 1972 s.36.]

51C. Review of charges

- (1) A person liable to pay fees or remuneration to a dentist for a dental service (not being a dental service constituting medical treatment for the purpose of the *Workers' Compensation Act 1912*⁵) may, within 3 months after service upon him of an account for the fees or remuneration, apply in writing to the Dental Charges Committee to review the account.

s. 51C

- (2) The Committee shall, upon such an application, —
 - (a) give to the applicant for the review an acknowledgment in the prescribed form that the matter is under review;
 - (b) review the account;
 - (c) certify, under the hand of the chairman, the amount which, in the Committee's opinion, is a reasonable amount of fees or remuneration for the dental service; and
 - (d) set out, in such certificate, the facts on which the Committee's decision was based.
- (3) The Committee may —
 - (a) require a person to furnish such information as it thinks necessary or desirable for the purpose of a review under this section;
 - (b) fix a time within which the information shall be furnished; and
 - (c) proceed to review an account for fees or remuneration for a dental service without the information requested if it is not furnished within the time fixed.
- (4) In reviewing an account the Committee is not required to conduct a formal hearing, but shall inform the applicant for the review and the dentist of any information furnished to the Committee under this section.
- (5) In reviewing an account the Committee shall have regard, in particular, to —
 - (a) the time occupied in giving, and the nature of, the dental service;
 - (b) the distance between the dental surgery or residence of the dentist, dental therapist or dental hygienist and the place at which the dental service was given;
 - (c) the hours of the day or night at which the dental service was given;

- (d) the degree of skill, knowledge or experience required in the giving of the dental service;
 - (e) whether the dental service was given by a specialist, a consultant, a dentist in general practice or a dental therapist; and
 - (f) any special circumstances submitted by the dentist.
- (6) In proceedings for the recovery of fees or remuneration in respect of a dental service, a certificate of the Committee under subsection (2) in relation to that dental service is evidence that the amount certified in the certificate is a reasonable amount of fees or remuneration for the dental service.
- (7) Notwithstanding the provisions of any other subsection the Committee may refer any application made to it under subsection (1) to the Counselling Committee of the Australian Dental Association (W.A. Branch) Inc. for determination or report.
- (8) Judicial notice shall be taken of the signature of the chairman appearing on a certificate under subsection (2) and of the fact that the person by whom the certificate purports to have been signed was, at the time the certificate was signed, the chairman.

[Section 51C inserted by No. 108 of 1972 s.37; amended by No. 39 of 1973 s.2; No. 64 of 1996 s.17.]

51D. Stay of proceedings

Where in any proceedings for the recovery of fees or other remuneration in respect of a dental service an acknowledgment in the prescribed form purporting to have been given to the defendant by the Dental Charges Committee and stating that the matter is under review by that Committee is produced to the court, those proceedings shall be stayed until the decision of the Committee is known unless the court for cause shown otherwise determines.

[Section 51D inserted by No. 108 of 1972 s.38.]

s. 52

52. Executor of deceased dentists may continue practice

Notwithstanding anything to the contrary contained in this Act, in case of the decease of any dentist carrying on the practice of dentistry at the time of his death, it shall be lawful for any executor of the will of such dentist, or for any administrator of his estate, to continue the business or practice of such deceased dentist for a period not exceeding 12 months after the death of such dentist, or for such longer period as the Board in writing may permit: Provided that such business or practice so continued shall be conducted *bona fide* by a dentist who during such period is registered under this Act.

53. Use of certain letters prohibited

(1) No person, whether a dentist or not shall —

- (a) use the letters “R.D.S.”; or
- (b) use any combination of letters implying that he holds a dental degree or diploma conferred upon him by a university or other institution recognised by the Board under this Act, unless he shall be rightfully entitled to use the same; or
- (c) use or permit to be used in relation to dentistry, whether upon or as an addition to his nameplate or sign or otherwise howsoever any title, description, word, or letters unless he shall be rightfully entitled to use the same; or
- (d) in any manner falsely claim to hold a degree, license, certificate, diploma, membership, or other title, status, or document which is recognised by the Board as entitling the holder to be registered as a dentist under this Act.

(2) Any person who in any respect contravenes the provisions of this section shall be guilty of an offence.

Penalty: For a first offence — \$100; for any subsequent offence — \$500.

[Section 53 amended by No. 113 of 1965 s.8; No. 19 of 1979 s.10.]

54. Provisions relating to name-plates or signs

- (1) No dentist shall exhibit or permit or suffer to be or remain exhibited in or about any portion of the premises at or in any part of which he carries on the practice of dentistry, any plate, notice board, or other notification that he practises at such premises of any kind or description other than that authorized by the rules or regulations:

Provided that any dentist who for a period of not less than 4 years next preceding the commencement of this Act was exhibiting and desires still to exhibit a plate, notice board, or other notification aforesaid of a size or description or containing matter not in conformity with the rules or regulations aforesaid, may within 6 months of the coming into operation of the said rules or regulations make application in the prescribed manner to the Board for a permit to continue the exhibition of the said plate, notice board, or other notification, and the Board may grant or refuse such permit, as it may think fit.

- (2) Every dentist who in any respect contravenes the provisions of this section shall be guilty of an offence.

Penalty: First offence — \$100; any subsequent offence — \$500.

[Section 54 amended by No. 113 of 1965 s.8; No. 19 of 1979 s.11.]

55. Dentist not to be employed by or agent for any person who is not a dentist

- (1) No dentist shall —
- (a) practise his profession as a dentist or perform any dental operation or service as the employee of or as agent for any company or any person which or who is not a dentist:

Provided that this section shall not apply to —

- (i) any dentist when he is practising his profession as a dentist as the employee of or as agent for

s. 55

any executor or administrator as provided by section 52 or as the employee of or as agent for any person or persons engaged in the business or practice of dentistry under the authority of section 56; or

- (ii) any dentist when he is practising the said profession as employee of or as agent in any dental hospital or dental college or in any dental clinic established by or under the Crown or by any local government;
- (b) enter into any partnership with, or share his earnings in his profession as a dentist with any company, or with any person who is not a dentist; or
- (c) authorize or permit or suffer his name to be used by any company or by any person who is not a dentist in the practice of dentistry, or in the performance of any dental operation or service; or
- (d) authorize or permit or suffer any person who is not a —
 - (i) dental attendant;
 - (ii) dental prosthetics student acting under the direction of a dentist as a requirement for obtaining a qualification prescribed for the purposes of section 18(1)(b) of the *Dental Prosthetists Act 1985*;
 - (iii) dental therapist;
 - (iiia) dental hygienist;
 - (iv) dentist;
 - (v) medical practitioner; or
 - (vi) registered nurse,to assist or take part in any act of dentistry or in any operation on the mouth or in any other dental operation or service;

- (e) subject to section 56, practise dentistry, or on any professional card, in any newspaper, journal, periodical, or otherwise advertise or hold himself forth as practising dentistry under a name other than his proper or usual name without any addition thereto.
- (2) Every dentist who in any respect contravenes any of the provisions of this section shall be guilty of an offence.

Penalty: First offence — \$100; any subsequent offence — \$500.

[Section 55 amended by No. 75 of 1963 s.30; No. 113 of 1965 s.8; No. 108 of 1972 s. 39; No. 19 of 1979 s.12; No. 94 of 1980 s.17; No. 4 of 1989 s.3; No. 14 of 1996 s.4; No. 64 of 1996 s.17.]

56. Provisions relating to use of firm-names

- (1) Where any person is engaged in the business or practice of dentistry and desires to carry on the business or practice under a firm-name, the Board may, on application being made in the prescribed manner, and on being satisfied that the applicant is registered as the proprietor of that firm-name under the *Business Names Act 1962*, grant to that person a permit authorizing the use of that firm-name to describe that business or practice.

[(2) repealed by No. 75 of 1963 s.31.]

[(3) repealed by No. 108 of 1972 s.40.]

- (4) Provided that —
- (a) every permit granted under this section shall be in writing in the prescribed form, and shall be personal to the particular person or persons mentioned in the permit, and shall not in any way or under any circumstances, other than in the case of an executor or administrator of a deceased dentist carrying on the practice of the deceased dentist as provided by section 52, be transferable or assignable to any person; and
- (b) this section shall be read subject to section 55(1)(a).

s. 57

- (5) Any person who in respect to the practice of dentistry uses any firm-name not authorized by a permit granted by the Board under this section shall be guilty of an offence.

Penalty: \$100 and, in addition, a daily penalty of \$20 for every day or part of a day during which the offence is continued.

[Section 56 amended by No. 75 of 1963 s.31; No. 108 of 1972 s.40; No. 19 of 1979 s.13.]

57. Board may apply for injunction

- (1) The Board may, subject to the Rules of the Supreme Court, apply to the Supreme Court, or a Judge thereof, for an injunction to restrain any person doing or continuing to do any act, matter, or thing which by this Act is declared to be an offence, and which is of a continuing nature, from doing or continuing to do such act, matter or thing, and on the hearing of such application such injunction may be granted, and such order may be made as to costs and otherwise as to the Court or Judge may seem fit.
- (2) Any proceeding by the Board under subsection (1) shall not in any way affect the liability of the person, whose act is complained of, to prosecution for an offence against this Act in relation to which the proceeding is taken by the Board under subsection (1).

58. General penalty

Any person or company who or which does or permits, or suffers to be done any act, matter, or thing which by this Act such person or company is forbidden to do, shall be guilty of an offence, and, where no special penalty is prescribed by this Act in respect of such offence, shall be liable to a penalty of not less than \$100 and not more than \$500.

[Section 58 amended by No. 113 of 1965 s.8; No. 19 of 1979 s.14.]

59. Proceedings for offences

Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

[Section 59 inserted by No. 78 of 1995 s.32.]

60. Provisions relating to prosecutions

The following provisions relating to prosecutions for offences under this Act shall apply, that is to say —

- (a) it shall not be necessary for the prosecution to prove —
 - (i) that the defendant received any remuneration or reward in connection with the act, matter, or thing complained of; or
 - (ii) the election and constitution of the Board, or the election of the President or any chairman or any member of the Board purporting to act or sign any document as such, or the appointment of the Registrar; or
 - (iii) that any offence was committed with a view to enabling the defendant to practise dentistry, or to claim the privileges conferred by this act upon a dentist;
- (b) in a prosecution for unlawfully practising dentistry or performing any dental operation or service, proof that the defendant gave advice in relation to dentistry in a room or other place in or adjoining which there was a dental chair or dental engine, or dental instruments or implements, or materials pertaining to the practice of dentistry, shall be evidence that the defendant was practising dentistry; and
- (c) when any person is charged under this Act with performing any dental operation or service which it is unlawful for him to perform, it shall be sufficient for the prosecution to allege that such person is not entitled

under this Act to perform such dental operation or service, and the burden of proof that he is so entitled shall rest on the person charged.

[Section 60 amended by No. 75 of 1963 s.32.]

[61. Repealed by No. 79 of 1995 s.68(3).]

62. Dentists to be exempt from serving on a jury

Every dentist shall be exempt from serving on any jury.

63. Fines etc. payable to Board

All fines and penalties imposed for offences against this Act are to be paid to the Board.

[Section 63 inserted by No. 78 of 1995 s.32.]

64. Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act, or for more effectually achieving the objects of this Act and for facilitating the exercise by the Board of its powers under this Act.
- (2) Regulations made by the Governor under this section may impose penalties not exceeding \$200 in respect of any contravention of any of the regulations.

[Section 64 amended by No. 113 of 1965 s.8; No. 19 of 1979 s.15.]

65. Saving of rights of assistants

[Omitted under section 7(4)(g) of the Reprints Act 1984.]

Schedule 1

[Omitted under section 7(4)(f) of the Reprints Act 1984.]

Schedule 2

[Sections 50A, 50B and 50D]

Part 1

Core Acts

1. Instruction in, and organization and supervision of, plaque control routine.
2. Recording of periodontal indices.
3. Dental prophylaxis.
4. Topical application of fluorides.
5. Application of desensitizing agents.
6. Application of plaque control agents.
7. Polishing and recontouring of restorations.
8. Application of fissure sealants to teeth.
9. Removal of calculus.
10. Application and removal of periodontal packs.
11. Dental radiography.
12. Taking of impressions for all purposes other than final impressions for all prosthetic procedures.
13. Application and removal of rubber dam.
14. Removal of sutures.

Part 2

Local Analgesia Acts

15. Administration of local dental analgesia.

Part 3

Orthodontic Acts

16. Placement of metallic or non-metallic separators.
17. Preparation of teeth for orthodontic banding.
18. Orthodontic band selection.
19. Attachment selection.
20. Placement of arch wire fixation.
21. Removal of ligatures.
22. Removal of arch wire fixation pins.
23. Removal of arch wires.
24. Routine checking for loose bands and broken appliances and re-cementing of loose bands.
25. Removal of bands.
26. Removal of attachments.
27. Removal of orthodontic cement.

Part 4

Dental Therapy Acts

28. Extraction by forceps of deciduous teeth under local analgesia.
29. Emergency treatment of pulp exposure.
30. Preparation and restoration of cavities in deciduous and permanent teeth of preschool and school children by direct placement materials.

Part 5

31. Restoration of prepared cavities in permanent teeth in adults by direct placement materials.

Part 6

32. Root planing.

Part 7

33. Caries detection.

[Schedule 2 inserted by No. 64 of 1996 s.16.]



Notes

- ¹ This reprint is a compilation as at 25 June 1999 of the *Dental Act 1939* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Short title	Number and Year	Assent	Commencement	Miscellaneous
<i>Dental Act 1939</i>	20 of 1939	16 November 1939	1 December 1939 (see section 1 and <i>Gazette</i> 24 November 1939 p.2041)	
<i>Dentists Act Amendment Act 1947</i>	13 of 1947	1 November 1947	1 November 1947	
<i>Dentists Act Amendment Act 1954</i>	48 of 1954	8 December 1954	8 December 1954	
<i>Dentists Act Amendment Act 1963</i>	75 of 1963	19 December 1963	19 December 1963	
<i>Dentists Act Amendment Act 1967</i>	11 of 1967	20 October 1967	16 February 1968 (see section 2 and <i>Gazette</i> 16 February 1968 p.337)	
<i>Dentists Act Amendment Act 1970</i>	98 of 1970	8 December 1970	5 March 1971 (see section 2 and <i>Gazette</i> 5 March 1971 p.669)	
<i>Dentists Act Amendment Act 1972</i>	108 of 1972	6 December 1972	1 January 1973 (see section 2 and <i>Gazette</i> 22 December 1972 p.4755)	

Short title	Number and Year	Assent	Commencement	Miscellaneous
<i>Dental Act Amendment Act 1973</i>	39 of 1973	18 October 1973	18 October 1973	
<i>Dental Act Amendment Act 1975</i>	107 of 1975	1 December 1975	1 December 1975	
<i>Dental Act Amendment Act 1979</i>	19 of 1979	30 August 1979	30 August 1979	
<i>Dental Act Amendment Act 1980</i>	94 of 1980	9 December 1980	28 August 1981 (see section 2 and <i>Gazette</i> 28 August 1981 p.3553)	
<i>Acts Amendment (Statutory Designations) and Validation Act 1981, section 4</i>	63 of 1981	13 October 1981	13 October 1981	
<i>Health Legislation Amendment Act 1984, Part V</i>	28 of 1984	31 May 1984	1 July 1984 (see section 2)	
<i>Acts Amendment (Financial provisions of regulatory bodies) Act 1987, section 4</i>	77 of 1987	26 November 1987	1 January 1988 (see section 2)	

Short title	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Dental Prosthetics Students) Act 1989, Part 2</i>	4 of 1989	20 April 1989	20 April 1989	
<i>Acts Amendment (Public Sector Management) Act 1994, Part 2</i>	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Hospitals Amendment Act 1994, section 18</i>	103 of 1994	11 January 1995	3 February 1995 (see section 2 and <i>Gazette</i> 3 February 1995 p.333)	
<i>Sentencing (Consequential Provisions) Act 1995, Part 23</i>	78 of 1995	16 January 1996	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	
<i>Industrial Relations Legislation Amendment and Repeal Act 1995, section 68(3)</i>	79 of 1995	16 January 1996	18 May 1996 (see section 3(2) and <i>Gazette</i> 14 May 1996 p.2019)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	

Short title	Number and Year	Assent	Commencement	Miscellaneous
<i>Dental Amendment Act 1996</i>	64 of 1996	11 November 1996	1 January 1997 (see section 2 and <i>Gazette</i> 31 December 1996 p.7427)	Section 19: transitional ⁶
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998, section 27</i>	10 of 1998	30 April 1998	30 April 1998 (see section 2(1))	

N.B. The *Dental Act 1939* was affected by the *Dental Prosthetists Act 1985* (Act No. 16 of 1985).

² See *Gazette* 17 August 1979 p.2483.

³ Under section 31(1)(f) of the *Acts Amendment (Public Service) Act 1987* (Act No. 113 of 1987), references to “Permanent Head” are to be construed as references to “chief executive officer”.

⁴ Repealed by the *Public Service Act 1978* (Act No. 86 of 1978) which has since been repealed by the *Public Sector Management Act 1994* (Act No. 31 of 1994).

⁵ Repealed by the *Workers’ Compensation and Rehabilitation Act 1981* (Act No. 86 of 1981).

⁶ Section 19 of the *Dental Amendment Act 1996* (Act No. 64 of 1996) reads as follows —

“

19. Transitional — school dental therapists

- (1) Subject to the principal Act, a person who immediately before the coming into operation of this Act was employed as a school dental therapist in a school dental service is, on the coming into operation of this Act, taken to —
 - (a) be registered as a school dental therapist under the principal Act; and
 - (b) hold a licence under the principal Act to act as a school dental therapist for a period ending on 31 December 1997.

- (2) The provisions of the principal Act apply to and in respect of a person taken under subsection (1) to be registered and to hold a licence under the principal Act as if that person were registered and held the licence under the principal Act.
- (3) The Registrar, within 30 days of the coming into operation of this Act, is to issue a certificate of registration and a licence to each person taken under subsection (1) to be registered and to hold a licence, and is to enter the name of that person on the Register under the principal Act.

”.