

DENTAL PRACTITIONERS REGISTRATION BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the Bill

The principal policy objectives of the Bill are to:

- protect the public by ensuring health care is delivered by registered dentists and dental specialists in a professional, safe and competent way;
- uphold the standards of practice within the dental profession; and
- maintain public confidence in the dental profession.

Reasons why the proposed legislation is necessary

The Review of Medical and Health Practitioner Registration Acts (the Review), which commenced in 1993, is a comprehensive review and reform of the legislation which registers and regulates a range of health professions, including dentistry. The objective of the Review has been to develop an efficient and effective regulatory system for the professions aimed at protecting the public and promoting quality health care standards. New health practitioner legislation has been developed to give effect to this key objective and to take into account:

- the changing environment in which these health professions operate
- administrative efficiency, including the desirability of a consistent and uniform regulatory approach to matters which are common to all the health professions
- interstate and overseas approaches to regulating health professions
- mutual recognition principles

- contemporary legislative standards, including consistency with fundamental legislative principles; and
- regulatory reform principles including regulatory efficiency, National Competition Policy and the desirability of minimising red tape and costs to business.

The new health practitioners legislative package will replace the current registration Acts with 15 Acts comprising:

- the *Health Practitioners (Professional Standards) Act 1999* which deals with all issues regarding complaints, discipline and impairment across all registered health practitioners (except nurses)
- the *Health Practitioner Registration Boards (Administration) Act 1999* which deals with administrative arrangements for all the registration boards; and
- 13 profession specific registration Bills (including this Bill) which deal with the constitution, functions and powers of registration boards; registration criteria, categories and processes; business and commercial issues (eg advertising); regulation of practice and protection of professional title; and other miscellaneous issues. To the greatest extent possible, these Bills adopt a uniform approach to matters common to the registered health professions—that is, the Bills are based on standard provisions that have been modified to address any profession specific issues for each profession. Attachment 1 provides a comparative overview of the 13 Bills which indicates the extent to which each Bill deviates from the standard provisions.

The first stage of the health practitioners legislative package, the *Health Practitioners (Professional Standards) Act 1999* and the *Health Practitioner Registration Boards (Administration) Act 1999* commenced operation in February 2000. This Bill forms part of the second stage of the health practitioners legislative package. The new package will establish a more effective registration system which will provide greater protection of the public and a significantly reduced regulatory burden.

How the policy objectives will be achieved

The objects of the legislation are primarily achieved in the following ways:

- *establishing the Dental Board of Queensland*

The board is established as the body responsible for administering the legislation. The Bill strengthens the accountability of the board by ensuring the board comprises a majority of practitioner members, while at the same time increasing the level of public membership (to two members) in order to enable effective participation by members of the wider community. Importantly, the Bill underpins the principle that all board members are appointed to represent the public interest and not the interests of professional or consumer organisations. The board's accountability is further strengthened through revised meeting procedures, requirements for declarations of interest by board members and more comprehensive annual reporting obligations.

- *providing for the registration of dentists and dental specialists*

Occupational regulation is widely regarded as a highly effective means of providing protection to the public, addressing inadequate consumer information and ensuring that practitioners uphold professional standards. The Bill significantly enhances the existing registration model by:

- simplifying the eligibility criteria for registration, for example, by replacing outdated and subjective concepts such as 'good fame and character' with more objective indicators of a person's fitness to practise the profession
- giving the board appropriate powers to enable it to thoroughly assess applications for registration, for example, to require an applicant to undergo a written, oral or practical examination to assess the applicant's ability to practise
- empowering the board to impose and review conditions on registration to enable practitioners to practise safely within their abilities, rather than rejecting applicants who are not fully eligible for registration
- implementing mechanisms to facilitate the ongoing competence of practitioners, for example, requiring registrants to demonstrate recency of practice when applying for renewal of registration (subject to the prescribing of the detailed requirements), and

statutory encouragement for practitioners to undertake continuing professional education.

- *imposing obligations on dentists and dental specialists and other persons in relation to the practice of dentistry*

The Bill further achieves the objectives of the legislation by providing for significant offences including:

- restrictions on the use of professional title and ‘holding out’ to be registered, for example, only a registered dentist may use the title ‘dentist’. This is a key offence provision designed to protect the public by providing consumers with a means of distinguishing between registered and non-registered practitioners
- engaging in conduct which compromises registrant autonomy. This is a key offence provision targeted at undesirable corporate behaviour in health practitioner businesses by both registrant and non-registrant owners, managers or other persons in a position to influence registrants
- making or accepting any payment or other benefit for referrals or recommendations
- failure to comply with advertising restrictions and notification of business names to the board
- taking a reprisal against any person who provides information, assistance or evidence in relation to an alleged offence against the Bill
- failure to comply with conditions on registration; and
- certifying any document, in a professional capacity, which the registrant knows is false or misleading.

It should be noted that the Bill continues to restrict the practice of dentistry. The practice restrictions imposed by the *Dental Act 1971* and section 18 of the *Dental By-law 1988* will be preserved by the Bill until the outcomes of the National Competition Policy Review of Restrictions on the Practice of Dentistry have been considered.

Estimated cost for Government implementation

The legislation will not have any financial impact on the Government as the Board will continue to be self-funding from registration and other fees.

Consistency with Fundamental Legislative Principles

Aspects of the Bill which raise possible fundamental legislative principles are outlined below:

Power to obtain criminal history reports

Under clause 45 of the Bill, the board may, when investigating a person's application for registration, require the police commissioner to provide a written report about the applicant's criminal history. The exercise of this power may be regarded as adversely affecting an individual's privacy.

The provision of this information will assist the board to decide whether an applicant is fit to practise the profession, as required under clauses 43 (Eligibility) and 45 (Fitness to practise) of the Bill. It is important to note that the Bill does not affect the operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. It should also be noted that any information obtained under this provision by the board will be protected by the confidentiality obligations under clause 218 of the Bill. Provisions of this nature are common in occupational regulation legislation where, for the purpose of protecting public health and safety, the integrity of registrants must be ensured.

No right of appeal against board's decision to cancel provisional registration

Clause 61 (Confirmation or cancellation of provisional registration) gives the board power to confirm or cancel a person's provisional registration. Although the board must notify the person of the board's decision, the board is not required to issue an information notice to the person about its decision. Having regard to the operation of clause 198 (Who may appeal), this means that the board's decision to cancel provisional registration can not be appealed under the Bill.

The power to provisionally register a person is designed to provide interim registration in circumstances where the board is not in a position to make a final decision on a person's application, for example, because the next board meeting is not scheduled for some time or the applicant is entitled to, but has not been conferred or awarded his or her qualification. For this reason, provisional registration is considered to be a 'privilege' over and above 'full' registration. It is also important to note that, despite the board's decision to cancel a person's provisional registration, subclause 62(5) requires the board to consider the person's application for registration. This ensures that the person is in the same position as a person who has not been provisionally registered, ie the board must decide to register, or refuse to register the person and the board's decision to refuse to register the person is a decision that may be appealed under part 6 of the Bill. For these reasons, it is considered appropriate for there to be no right of appeal against the board's decision to cancel provisional registration.

Requirement to notify on-going medical conditions

Clause 70 (Procedural requirements for applications) requires an applicant for renewal of general registration to state whether he or she suffers from any ongoing medical condition that adversely affects his or her ability to practise the profession. This obligation may be regarded as compromising the rights of the registrant in that this information could be used by the board to initiate action under the impairment provisions of the *Health Practitioners (Professional Standards) Act 1999*.

The requirement to apply for renewal of general registration is a mechanism for ensuring the ongoing competence of registrants, which in turn is consistent with the objective of the legislative scheme, including the Bill, to protect public health and safety. The information that registrants are required to provide on application for renewal of registration will assist the board to determine whether the applicant continues to be able to practise the profession safely and competently.

It should be noted that an applicant's mental and physical health is one of a number of 'fitness to practise' indicators that may be taken into account under clause 45, when the board assesses the applicant's application for general registration under part 3 division 2 of the Bill. For this reason, it is considered reasonable to require applicants for renewal of registration to advise the board whether they suffer from an ongoing medical condition that adversely affects their ability to practise the profession (all that is

required is a 'yes' or 'no' response to this question). It is important to note that the board can only deal with this information as permitted under the *Health Practitioners (Professional Standards) Act 1999*. That Act, in part, establishes a two-stage process for dealing with impaired registrants (including an informal and collaborative approach in the initial stage) which provides appropriate recognition and protection of registrants' rights.

Reasonable excuse for failure to comply with document production requirement

Clause 190 (Failure to produce document) makes it an offence for a person to fail to provide a document to an inspector unless the person has a reasonable excuse. The provision specifies that it is not a reasonable excuse for the person not to comply with the requirement if compliance might tend to incriminate the person. This provision may be regarded as compromising the person's protection against self-incrimination.

An inspector's power to require a person to produce a document or make a document available for inspection by the inspector is limited to documents issued to the person under this Act, for example, a certificate of registration. Given the limited extent of this provision and the importance of such documents in achieving the objectives of the legislation, it is reasonable to require a person to comply with the requirement even if to do so might tend to incriminate the person.

Reversal of onus of proof

Clause 213 (Responsibility for acts or omissions of representatives) effectively provides that an action or omission by a person's representative, in relation to an offence against this Act, is taken to have been done by the person if the representative was acting within the scope of the representative's authority. In these circumstances, the person will have been taken to have committed the relevant offence unless the person can prove that he or she could not, by the exercise of reasonable diligence, have prevented the act or omission.

Clause 214 (Executive officers must ensure corporation complies with Act) provides that if a corporation is convicted of an offence against the Bill, each executive officer of the corporation is taken to have committed the offence of failing to ensure that the corporation complies with the relevant

provision of the Bill. The effect of this clause is to presume an executive officer of a corporation to be guilty unless the executive officer can prove that he or she took reasonable steps to ensure the corporation complied with the provision, or that he or she was not in a position to influence the conduct of the corporation in relation to the offence.

While these provisions effectively provide for the reversal of the onus of proof, it is important to note that a number of offences provided for under the legislation deal with situations where there may be serious risk of harm to the health and safety of persons (for example, clause 152 Aiding, abetting etc conduct that is a ground for disciplinary action). Having regard to the object of the Bill to protect public health and safety, it is appropriate that:

- a person be required to oversee the conduct of his or her representatives and, in doing so, make reasonable efforts to ensure that his or her employees or agents comply with the requirements of the legislation;
- an executive officer who is in a position to influence the conduct of a corporation be required to ensure the corporation complies with the legislation; and
- an executive officer who is responsible for a contravention of the legislation, be accountable for his or her actions and not be able to ‘hide’ behind the corporation.

As such, it is contended that clauses 213 and 214 are warranted to ensure that there is effective accountability at a corporate level.

Immunity from proceedings or prosecutions – officials

Clause 231 (Protecting officials from liability) specifies that a board member, a committee member who is not a board member, the Executive Officer of the Office of Health Practitioner Registration Boards, a person appointed by the board to conduct a health assessment under part 3 of the Bill, an inspector or a person acting under the direction or authority of an inspector is not civilly liable for act or omission, made honestly and without negligence, under this Bill.

It is not considered appropriate for an individual to be made personally liable as a consequence of carrying out his or her responsibilities under the legislation, in good faith. As such, clause 231 prevents a civil liability from being attached to an individual. Instead, such liability attaches to the board.

The proposed immunity under this clause does not extend to an official who has been negligent, even though the official may have acted in good faith.

Consultation

The issues addressed by the new health practitioners legislative package, including this Bill, have been the subject of an unprecedented degree of public consultation undertaken as part of the Review. The consultation process for the Review has involved:

- *release of public consultation documents*
 - Medical Act Information Paper (1993)
 - Review of the Medical Act – Discussion Paper (1994)
 - Review of Health Practitioner Registration Acts – Discussion Paper and 10 profession specific attachments (1994) – 3000 copies distributed and 198 submissions received in response
 - Review of Medical and Health Practitioner Registration Acts – Draft Policy Paper (1996) – over 2000 copies distributed and 252 submissions received.

- *public meetings*

Public meetings were held in Brisbane, Toowoomba, Maroochydore, Southport, Cairns and Townsville to discuss issues raised in the 1994 Discussion Papers.

- *stakeholder advisory groups*

The following groups contributed to the research and policy development phase of the Review:

- Medical Act Steering Committee (comprising senior public and private sector medical practitioners, Medical Board members, representatives of the Australian Medical Association – Queensland Branch and the Health Rights Commissioner)
- Departmental Advisory Group (comprising registration board members employed by Queensland Health and the Health Rights Commissioner)

In addition, during the research and policy development phase, consultation was undertaken with public members of the registration boards and the Health Rights Advisory Council, and nominees of all registration boards and peak professional associations.

- *targeted consultation with key stakeholders*

For the purpose of clarifying issues raised in submissions to the Draft Policy Paper, the Review undertook targeted consultations with 31 key stakeholders (principally the registration boards and peak professional associations and consumer groups) over a five month period in 1997.

- *exposure drafts of new health practitioner legislation*

In February 1999, the Review conducted targeted consultation on exposure drafts of the first stage of the new health practitioners legislative package. The *Health Practitioners (Professional Standards) Act 1999* and *Health Practitioner Registration Boards (Administration) Act 1999* commenced operation in February 2000.

In March 2000, the Review conducted targeted consultation on exposure drafts of the 13 profession specific registration Bills (including this Bill) with key stakeholders, including the registration boards, peak health professional associations, relevant tertiary institutions and specialist colleges, three consumer organisations, the Health Rights Commissioner and the Office of Health Practitioner Registration Boards.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Division 1—Introduction

Clause 1 sets out the short title of the Act.

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Division 2—Operation of Act

Clause 3 specifies that all persons, including the State, are bound by the Act. However, the State can not be prosecuted for an offence against the Act.

Clause 4 explains that the Act forms part of a legislative scheme and is to be read in conjunction with the other legislation comprising the scheme, namely:

- the health practitioner registration Acts—these Acts are specified in the definition of this term which appears in the dictionary in Schedule 4 of the Act
- the *Health Practitioner Registration Boards (Administration) Act 1999*, which establishes administrative arrangements for the registration boards; and
- the *Health Practitioners (Professional Standards) Act 1999*, which deals with all issues regarding complaints, discipline and impairment across all registered health practitioners (except nurses).

Clause 5 requires the board, when deciding an application for registration or making a decision under this Act affecting a person's registration, to ensure that its decision complies with and is consistent with the operation of a decision affecting the person's registration, made by an adjudicative body under the *Health Practitioners (Professional Standards Act) 1999*. For

example, if the Health Practitioners Tribunal cancels a person's registration and orders that the person can not apply for registration within a specified period, the board can not decide to register the person under this Act within the specified period. If a professional conduct review panel orders that conditions be imposed on a person's registration, the board must ensure that any decision it makes under this Act which affects the person's registration, for example, to impose recency of practice conditions under part 3, division 4, does not compromise the effect of the conditions ordered by the panel. The terms 'registrant' and 'registration' are defined in the dictionary in Schedule 4 of the Act.

Clause 6 specifies that this Act does not affect the operation of the *Mutual Recognition (Queensland) Act 1992* or the *Trans-Tasman Mutual Recognition (Queensland) Act 1999*, which facilitate the registration in Queensland of dentists and dental specialists registered in other Australian jurisdictions and New Zealand.

Division 3 — Objects

Clause 7 sets out the objects of the Act. As detailed in the General Outline of these Explanatory Notes, the primary focus of the Act is the protection of the public. The objects set out in subclause 7(1) are very important for guiding the administration of the legislation. This clause also sets out the ways in which the objects of the Act are to be achieved through the legislation. The matters listed in subclause 7(2) are the principal mechanisms, processes and functions which enable the objects of the Act to be met.

It should be noted that the term 'profession' is defined in the dictionary in Schedule 4 of the Act, to mean the dental profession.

Division 4—Interpretation

Clause 8 provides that particular words used in the Act are defined in the dictionary in Schedule 4 of the Act (located at the end of the Act).

PART 2—DENTAL BOARD OF QUEENSLAND

Division 1—Establishment and functions

Clause 9 establishes a body corporate known as the Dental Board of Queensland ('the board'). The board is the body responsible for administering the Act. The term 'board' is defined in the dictionary in Schedule 4 of the Act.

Clause 10 provides that the board does not represent the State.

Clause 11 provides an overview of the board's role by specifying the board's functions under this Act. The key functions are to:

- assess applications for registration
- register practitioners who meet the eligibility criteria for registration, with or without conditions on registration
- maintain a publicly accessible register of registrants
- encourage the ongoing competence of registrants through mechanisms such as renewal of registration and the promotion of 'refresher' courses and continuing professional education (it should be noted that the board's role in promoting 'refresher' courses and continuing professional education is discretionary)
- monitor and enforce compliance with the Act, including compliance with conditions on registration; and
- contribute to developments in the regulation of the profession through conferring and cooperating with bodies such as interstate regulatory authorities, educational institutions and nationally recognised accreditation bodies.

Some of these functions are discussed in the General Outline of these Explanatory Notes (How the policy objectives will be achieved), while other functions are discussed below in relation to the provisions of the Act which deal with the particular function.

Clause 12 requires the board to perform its functions under the legislative scheme independently, impartially and in the public interest. This requirement reflects the board's status as an independent statutory body whose members do not represent or serve the interests of the entity which

nominated them for membership under part 2, division 2 of the Act (discussed below), but whose members are appointed to represent the public interest and have a duty to conduct board business independently and impartially. However, the board is accountable to the Minister for the performance of its functions and must comply with a Ministerial direction given under clause 36 (discussed below).

Clause 13 gives the board the powers of an individual to enable the board to do anything necessary or convenient for the performance of its functions under this or another Act. There is nothing to limit the board exercising its powers outside Queensland or Australia. Subclause 13(1) provides examples of the scope of the board's powers under this clause, including the power to:

- enter into service agreements under the *Health Practitioner Registration Boards (Administration) Act 1999*. The term 'service agreement' is defined in the dictionary in Schedule 4 of the Act. The effect of subclause 13(2) is to ensure that the board can not exercise its powers under this clause to circumvent the operation of the *Health Practitioner Registration Boards (Administration) Act 1999*; and
- fix charges for services it supplies. For example, the board could charge a fee for the provision of statistical data and other information about its registrants for research or data collection purposes. It should be noted that this power does not enable the board to set or change fees prescribed by regulation.

It is important to note that this clause does not provide a comprehensive list of the board's powers under this Act. Powers that are specific to the board's functions, for example, the power to register eligible persons, are separately specified in the provisions of the Act which deal with the particular function.

Clause 14 provides for the delegation of the board's powers under this Act, excluding the powers specified in subclause 14(2), to the persons specified in subclause 14(1). This will ensure the board can exercise its functions in an effective and efficient manner, for example, the board can delegate its power to decide to renew or restore registrations. In order to ensure that the board's powers are delegated only in appropriate cases and to appropriate persons:

- subclause 14(2) prevents the board from delegating the key powers conferred on it for the purpose of protecting the public. For example, although the board can delegate its power to decide to renew registrations, it can not delegate its power to decide to renew registration on recency of practice conditions as the power to decide to impose conditions can not be delegated; and
- subclause 14(3) provides that when the board delegates a power to a board committee or a staff member of the Office of Health Practitioner Registration Boards, the recipient of the delegation must have qualifications, experience or standing that are appropriate to the exercise of the power.

The terms ‘member’, ‘committee’, ‘executive officer’, ‘office’, ‘renewable registration’ and ‘impose’ are defined in the dictionary in Schedule 4 of the Act.

Division 2—Membership

This division sets out requirements for the composition of the board. These requirements reflect the policy intention that registration boards must:

- comprise a clear majority of members of the profession
- provide for effective participation by members of the wider community
- represent the public interest (not the interests of professional associations or community organisations to which board members may belong).

Clause 15 provides the capacity to vary the size of the board, within a range of seven to eleven members. In practice, the size of the board will be determined by the Governor-in-Council on the recommendation of the Minister, having regard to the size and needs of the profession and following consultation with the profession.

Clause 15 specifies that, within the range of seven to eleven members, the membership of the board must comprise:

- a majority of practitioners who hold general registration under part 3 of the Act ('registrant members')—the minimum requirements for the appointment of registrant members are specified in clause 16 (discussed below)
- members of the wider community who have an interest in and knowledge of consumer health issues and who are not, and have not ever been, registered as a health practitioner (including as a nurse) in Queensland or any other Australian or overseas jurisdiction ('public members')—the minimum requirements for the appointment of public members are specified in clause 17 (discussed below); and
- one lawyer, who is to be nominated by the Minister.

Subclause 15(3) enables the Minister to nominate other persons who do not belong to the registrant member, public member or lawyer categories specified in subclause 15(2), for example, a former registrant. Having regard to the minimum membership requirements specified in subclauses 15(2) & (4) and clauses 16 & 17, the Minister can only nominate persons under subclause 15(3) where the board comprises nine or more members.

It is important to note that the matters specified in clause 21 (discussed below) must also be taken into account in determining whether a person is eligible for board membership.

The term 'general registrant' is defined in the dictionary in Schedule 4 of the Act. The term 'earlier corresponding Act', which is used in relation to public members, is defined in subclause 15(5).

Clause 16 specifies the minimum requirements for the appointment of registrant members. Having regard to the operation of subclause 15(4), the board membership must include a majority of registrant members, of whom:

- at least two members are nominated by professional bodies considered by the Minister to represent the interests of registrants
- if there is a Queensland-based educational institution for the profession—one member is nominated by educational institution/s chosen by the Minister (the term 'educational institution' is defined in the dictionary in Schedule 4 of the Act); and
- at least one member is nominated by the Minister.

It should be noted that where there is:

- no Queensland-based educational institution for the profession—the position is to be filled by a member nominated under either subparagraph 16(a) or (c); or
- more than one Queensland-based educational institution for the profession—the governing bodies of the educational institutions chosen by the Minister must provide a joint nomination.

Clause 17 specifies the minimum requirements for the appointment of public members. The board membership must include a minimum of two public members, of whom:

- at least one member is nominated by bodies, such as consumer advocacy organisations (including organisations whose interests may be broader than, but include, consumer health issues), considered by the Minister to have an interest in consumer health issues; and
- at least one member is nominated by the Minister.

The combined operation of clauses 15—17 means that a board consisting of seven members will comprise:

- four registrant members (2 nominated by professional bodies; 1 nominated by educational institution/s and 1 nominated by the Minister)
- two public members (1 nominated by community organisations and 1 nominated by the Minister); and
- one lawyer (nominated by the Minister).

The additional membership of larger boards (ie those consisting of nine or more members) may comprise members nominated by:

- the Minister, under subclause 15(3) or subparagraphs 16(c) or 17(b); and/or
- by the bodies referred to in subparagraphs 16(a) or 17(a).

Clause 18 sets out the process by which professional bodies, educational institutions and community organisations are to provide nominations for the positions described under subparagraphs 16(a) & (b) and 17(a). This process does not apply to Ministerial nominees, ie the positions described under subclause 15(2)(c) and subparagraphs 16(c) and 17(b).

- Step 1: The Minister invites suitable entities to provide nomination/s within a reasonable period. In doing so, the Minister may request an entity to provide more than the required number of nominations.
- Step 2: If the Minister receives the required number of nominations for each position—subclauses 18(4)-(7) do not apply ie the persons nominated are taken to be the nominees for the relevant positions.
- If the Minister receives more than the required number of nominations for each position (either in response to the Minister’s request under subclause 18(3) or on the initiative of the entity)—subclause 18(4) applies ie the Minister must choose a person from the nominations provided for the position.
- If the Minister receives less than the required number of nominations for each position (because an entity fails to provide any nominations or provides less than the number of nominations requested by the Minister under subclause 18(3) or an entity nominates an ineligible person)—subclause 18(6) applies ie the Minister must nominate a person for the position. Subclause 18(7) provides that, in doing so, the Minister may nominate a person nominated by the entity, even though the entity provided less than the number of nominations requested by the Minister.
- Step 3: If the Minister chooses a person under subclause 18(4)—the person chosen is taken to be the nominee for the relevant position.
- If the Minister nominates a person under subclause 18(6)—the person nominated for the position is deemed to have been nominated by the relevant entity.

Clause 19 provides for the Governor-in-Council to appoint a chairperson and deputy chairperson of the board and stipulates that only registrant members can be appointed to these offices. *Clause 19* also enables a person to be appointed as both a member and chairperson or deputy chairperson of the board under the same instrument of appointment; specifies the term of office for both appointments; describes how the offices become vacant and provides for the deputy chairperson to act as chairperson in the

circumstances specified in subclause 19(6). The terms ‘chairperson’ and ‘deputy chairperson’ are defined in the dictionary in the Schedule 4 of the Act.

Clause 20 specifies that the maximum term of office for a member is four years. There is nothing to prevent the appointment of a member for a period of less than four years, which means membership terms can be staggered. In addition, there is no restriction on the number of terms a person can serve as a member of the board.

Clause 21 sets out the circumstances which render a person ineligible to be appointed, or to continue, as a member of the board. These include conviction of an indictable offence in any jurisdiction or an offence against this Act. The term ‘convicted’ is defined in the dictionary in Schedule 4 of the Act. It should be noted that this clause operates in addition to section 25 of the *Acts Interpretation Act 1954* which specifies that the power to appoint a person to an office includes the power to remove the person from office at any time.

Clause 22 specifies the circumstances in which a member is taken to have vacated office, namely when a member resigns; ceases to be eligible for membership under clause 21 (discussed above); is absent without the board’s permission from 3 consecutive board meetings (where a quorum is present) of which due notice has been given; or no longer meets the requirements for membership specified under subclause 15(2), for example, a registrant member who loses his or her registration; a public member who becomes a registered health practitioner or a lawyer who is struck off the Roll or disbarred.

It is important to note that any vacancies must be filled having regard to the requirements of clauses 15—17, in order to ensure that the minimum requirements for the composition of the board continue to be met.

Clause 23 specifies when a notice of resignation tendered to the Minister by a member, chairperson or deputy chairperson, takes effect.

Clause 24 sets out the process for ‘fast-tracking’ the appointment of a person to act in the office of a member who is absent on leave. For this to occur, the member (‘the approved absent member’) must first obtain the Minister’s approval for a leave of absence of more than three months. The Minister may then appoint another person to act as an interim replacement for the approved absent member. It is important to note that the person appointed as the interim replacement must belong to the same membership

category as the approved absent member. For example, the Minister can only replace a public member with a person who meets the membership requirements specified in subclause 15(2)(b) for public members. Subclause 24(4) specifies what is to occur if the approved absent member is the deputy chairperson. If the approved absent member is the chairperson, then the arrangements specified under subclause 19(6) apply (discussed above).

It should be noted that if the board does not require the appointment of an interim replacement for a member who is on leave, there is no requirement for the member to obtain the Minister's approval for a leave of absence.

Clause 25 provides that, despite the minimum membership requirements specified in clauses 15—17, a vacancy in the membership of the board does not affect the performance of the board's functions or the exercise of its powers.

Clause 26 stipulates the entitlement of members to be paid fees and allowances decided by the Governor-in-Council. It is implicit that members may waive their entitlement under this clause.

Division 3—Board business

It should be noted that this division applies to any business conducted by the board under the legislative scheme, except where there is a more specific provision in the relevant Act (for example, the *Health Practitioners (Professional Standards) Act 1999* sets out detailed procedural provisions relating to board hearings of disciplinary matters).

Clause 27 enables the board to administratively determine procedural matters associated with the conduct of its business, subject to the requirements of this division.

Clause 28 requires the chairperson to determine meeting times and places and to convene a meeting when requested to do so, in writing, by the Minister or by a quorum of members.

Clause 29 specifies how many members constitute a quorum for the board. Having regard to the generally understood meaning of the term, a 'quorum' is the number of members required to be present at a board meeting in order for the board to transact its business legally.

Clause 30 specifies who is to preside at meetings of the board, namely the chairperson; or in the absence of the chairperson, the deputy chairperson; or in the absence of both the chairperson and the deputy chairperson, a member (who must be a registrant member) chosen by a majority of the members present.

Clause 31 sets out various procedural requirements for the conduct of board meetings. Subclauses 31(1)—(3) specify voting procedures—questions are to be determined by a majority of votes; each member present has a deliberative vote, and in the event of a tied vote, the presiding member also has a casting vote; a member who abstains from voting is taken to have voted for the negative. Subclauses 31(4)—(6) provide for board meetings to be held by distance communication and for board decisions to be made by flying minutes.

Clause 32 requires the board to keep minutes of its meetings which, when a dissenting member requests, must also record the fact that the member voted against a given resolution. The board must also keep a separate record of all board decisions made by flying minute under subclause 31(6).

Division 4—Board committees

It should be noted that this division applies to any business conducted by the board under the legislative scheme, except where there is a more specific provision in the relevant Act.

Clause 33 gives the board power to establish committees to assist in the performance of its functions and to decide terms of reference and any other matters about a committee that are not provided for under this Act. Subclause 33(4) specifies the functions of a committee. It is important to note the operation of clause 14 (discussed above) in relation to the membership of a committee whose functions include exercising powers delegated to it by the board. In order for a committee to exercise powers delegated to it under clause 14, the membership of the committee must include at least one board member. Otherwise there is no restriction on the membership of a committee, which may include and/or comprise non-board members. It should also be noted that a committee must keep a record of the decisions it makes when exercising a power delegated to it under clause 14. (It is important to note that under section 12 of the *Health*

Practitioner (Professional Standards) Act 1999, the board can not delegate its powers under that Act to a committee).

Clause 34 stipulates the entitlement of committee members to be paid fees and allowances decided by the Governor-in-Council. It is implicit that committee members may waive their entitlement under this clause.

Division 5—Disclosure of interests by board members and committee members

It should be noted that this division applies to any business conducted by the board under the legislative scheme.

Clause 35 places an obligation on board members and committee members to disclose any personal or pecuniary interest (for example, in matters relating to themselves, their families or business associates) where such interests relate directly or indirectly to matters under consideration by the board or the committee and which could conflict with the proper performance of the member's duties when considering the matter. When a disclosure is made under this clause, the member must absent himself or herself from deliberations and decisions about the matter and the disclosure must be minuted. The absence of members under this clause does not compromise the quorum of the board or committee. Subclause 35(8) excludes the mere fact that a member is registered from the operation of this clause.

Division 6—Directions by Minister

Clause 36 specifies the Minister's powers in relation to the board. To enhance the accountability of the board, the Minister has the power to direct the board in relation to a matter relevant to the performance of its functions under this Act. The Minister may give a written direction under this provision, including a direction to provide reports and information, if the Minister is satisfied that it is necessary in the public interest to do so. However, it is important to note that the Minister can not give a direction about the decisions specified in subclause 36(3) which affect a person's registration. Notwithstanding the board's duty under clause 12 (discussed above), the board must comply with the Minister's direction.

The Minister's powers in relation to the board are balanced by a requirement to publicly report on directions given under this provision. The reporting requirement, which applies to all Ministerial directions given to the board under this Act, is set out in clause 37 below.

Division 7—Annual reports

Clause 37 specifies various matters that must be included in the board's annual report under the *Financial Administration and Audit Act 1977* (refer also to clause 38 below). Specifically, the board is required to report on the amount of expenditure on investigations and inspections under part 5 of the Act and on discretionary functions such as those described in subparagraphs 37(1)(d) and (e). The board's annual report must provide statistical information including the number of registrants and must also include non-identifying copies of all Ministerial directions given to the board under clause 36 during the financial year. Having regard to the objects of the Act, it is particularly important for the board to report on any activities undertaken specifically for the benefit of consumers of dental services, for example, the production of an information booklet about the standards of practice expected of registered practitioners.

It should be noted that the board may also be required to include a statement under clause 219 (discussed below) in its annual report.

Division 8—Other provisions about the board

Clause 38 provides that the board is a statutory body for the purpose of the *Financial Administration and Audit Act 1977* ('the FA&A Act'). The effect of clause 38 is to apply the provisions of the FA&A Act, which deals with the financial administration and audit of statutory bodies, to the board. For example, under the FA&A Act the board will be required to prepare annual financial statements and an annual report.

Clause 39 provides that the board is a statutory body for the purpose of the *Statutory Bodies Financial Arrangements Act 1982* ('the SBFA Act'). The effect of clause 39 is to apply the provisions of the SBFA Act to the board. For example, the SBFA Act gives the board power to operate a deposit and withdrawal account with a financial institution to the extent

necessary or convenient for its day-to-day operations. In order to operate such an account with an overdraft facility, the SBFA Act requires the board to obtain the Treasurer's approval to do so. Subclause 39(2) provides that the board's powers under this Act are limited to the extent specified in Part 2B of the SBFA Act. For example, even though clause 13 gives the board the powers of an individual, the board's investment powers are limited to the investment powers provided under the SBFA Act.

Clause 40 specifies arrangements for the custody and use of the board's common seal. It should be noted that section 42A of the *Evidence Act 1987* provides for judicial notice to be taken of the imprint of the board's seal.

PART 3—REGISTRATION

Part 3 makes provision for the registration of eligible persons under this Act. Part 3 establishes three categories of registration (general, specialist and special purpose, all of which may be granted provisionally), specifies the eligibility criteria for each registration category and makes provision for the various stages of the registration process ie making and deciding applications, periods of registration and registration certificates, imposing and reviewing conditions on registration, renewal and restoration and cancellation of registration.

Division 1—Preliminary

Clause 41 specifies that only an individual may apply for registration under this Act. The term 'registration' is defined in the dictionary in Schedule 4 of the Act.

Division 2—Applications for general registration

Division 2 makes provision for the category of general registration. This is the basic form of registration, which can be granted with or without conditions. Conditions imposed on a general registration can be reviewed

under part 3, division 7. A general registration can be renewed under part 3, division 4 and restored under part 3, division 5. The term ‘general registration’ is defined in the dictionary in the Schedule 4 of the Act.

Subdivision 1—Applications

Clause 42 sets out the procedural requirements for making an application for general registration. The term ‘approved form’ is defined in the dictionary in Schedule 4 of the Act. Subparagraph 42(1)(c)(iv) enables the board to require applicants to provide other specified documents, for example proof of identity, with an application.

Subdivision 2—Eligibility for general registration

Clause 43 sets out the criteria which the board must consider when deciding whether an applicant is eligible for general registration. The criteria are specified in detail in clauses 44 and 45 respectively (discussed below). Subclause 43(2) clarifies that the board may address concerns about an applicant’s eligibility for general registration by imposing conditions on the registration under clause 57 (discussed below).

Clause 44 specifies the circumstances in which an applicant is qualified for general registration, as required under subparagraph 43(1)(a). It is intended that the qualifications prescribed under subparagraph 44(1)(a) will be current Australian and New Zealand qualifications in the profession.

Subparagraph 44(1)(b) applies to applicants who apply for general registration on the basis of on a non-prescribed qualification. It should be noted that subparagraph 44(1)(b) operates in conjunction with subclause 44(2), which sets out matters the board may take into account when deciding whether an applicant is qualified under subparagraph 44(1)(b). The board may obtain advice from an external body for this purpose. In this regard, it is intended that the board will work collaboratively with any nationally recognised bodies which have the function of accrediting, assessing and/or recognising qualifications in the profession.

Subparagraph 44(1)(c) applies to applicants who are not qualified under subparagraphs 44(1)(a) or (b), for example, applicants who have a qualification in the profession that does not meet the requirements under subparagraphs 44(1)(a) or (b) but who have significant practical experience in the profession. It should be noted that the board is not obliged to set and administer the qualifying examination itself.

Clause 45 sets out the matters the board may take into account when considering whether an applicant is fit to practise the profession, as required under subparagraph 43(1)(b). These matters include:

- mental and physical health
- command of the English language
- whether the applicant is or was previously registered in any jurisdiction (including previous registration in Queensland), and if so, whether the registration is or was subject to conditions, suspended or cancelled and the reasons why
- whether the applicant has been convicted of an indictable offence, an offence against health practitioner legislation or another practice-related offence in any jurisdiction; and
- whether the applicant is relying on a qualification obtained more than three years before applying for registration. [For the limited purpose of this provision, subclause 45(3) extends the meaning of ‘qualification’ and ‘qualification day’ to include the passing of a qualifying examination under subclause 44(1)(c)]. In these circumstances, the board may take into account the nature, extent and period of practice by the applicant since obtaining the qualification. This consideration is targeted at practitioners who delay in applying for initial registration or who seek to reinstate their registration after allowing it to lapse for an extended period.

Subclauses 45(4)—(5) give the board power to obtain an applicant’s criminal history. Subclause 45(6) defines the term ‘criminal history’ for this purpose.

Subdivision 3—Inquiries into applications

Clause 46 gives the board power to:

- investigate the applicant, for example, by researching or making reasonable inquiries about the applicant
- require the applicant to provide further information or documentation
- require the applicant to undergo a written, oral or practical examination to assess the applicant's ability to practise the profession. It should be noted that there is nothing to prevent the board from appointing an external body to set and administer the examination on the board's behalf; and
- require the applicant to undergo a health assessment to assess the applicant's mental and physical capacity to practise the profession. The term 'health assessment' is defined in the dictionary in Schedule 4 of the Act.

Clause 46 requires the board to give the applicant notice of the board's intention to exercise the powers specified in subparagraphs 46(1)(b)—(d) within a reasonable minimum period of 30 days. An applicant who fails to comply with these requirements is taken to have withdrawn his or her application.

Clause 47 specifies who may be appointed to conduct a health assessment under subparagraph 46(1)(d).

Clause 48 requires the person or persons appointed under clause 47 to prepare a report about the health assessment ('the assessment report') for the board's consideration. The assessment report must address the matters specified in subclause 48(2).

Clause 49 shields an assessment report prepared under clause 48 from use in any proceedings, other than the proceedings exempted under the definition of 'stated proceedings' in subclause 49(4), ie proceedings that could arise out of the board's decision to impose conditions to address the applicant's mental and/or physical incapacity to practise. The purpose of the shield provided by this provision is to ensure that assessment reports are used only for the purpose for which they were created and not for any other kind of actions.

Clause 50 creates an entitlement for persons who conduct health assessments and prepare assessment reports to be paid by the board. The provision is cast in such a way as to enable these persons to waive payment.

Subdivision 4—Decision on applications

Clause 51 requires the board to consider an application that meets the requirements under clause 42 (discussed above) and decide either to register, or refuse to register, the applicant as a general registrant.

Clause 52 sets out what action the board must take when it makes a decision under clause 51 (discussed above):

- if the board decides to register the applicant, it must as soon as practicable issue an appropriate certificate of registration to the applicant. It is important to note the operation of clause 134 (discussed below), which clarifies that when the board decides to register an applicant under this division, the person is taken to be registered under part 3. It is also important to note the operation of clause 56 (discussed below) which clarifies when the applicant's registration takes effect. The terms 'general registrant' and 'certificate of general registration' are defined in the dictionary in Schedule 4 of the Act. Clause 55 specifies the form and contents of a registration certificate (discussed below); or
- if the board decides to refuse to register the applicant, the board must give the applicant an information notice containing the information specified in paragraphs (a)—(d) of the definition of 'information notice' (which is located in the dictionary in Schedule 4 of the Bill). An information notice is a written notice which details the board's decision and the reasons for it and provides details regarding when and how the applicant may appeal the board's decision. Having regard to the operation of clause 198 (discussed below), the board's decision to refuse to register an applicant for general registration is a decision that may be appealed under part 6 of the Act.

Clause 53 sets out the timeframes within which the board must decide an application. These timeframes may be extended under clause 54 (discussed below). It is important to note that if the board fails to decide the application within these timeframes (and the applicant is not provisionally registered under part 3, division 3), the board is taken to have decided to refuse to register the applicant. Having regard to the operation of subclause 52(2), the person is entitled to receive an information notice and on this basis may appeal the board's 'default decision' under part 6 of the Act.

Clause 54 enables the board to extend the timeframes specified in clause 53 because of the complexity of the issues that need to be considered in deciding the application. In order to ensure that the applicant is aware of the status of his or her application, the board is required to give applicant written notice that the timeframe for deciding the application has been extended.

Subdivision 5—Information in certificates of general registration

Clause 55 requires a certificate of general registration to be in the approved form, which must include at least the information specified in subclause 55(2). There is nothing to prevent the inclusion of additional information in the approved form.

Subdivision 6—Period of general registration

Clause 56 specifies the period of general registration as a prescribed period of up to three years (the ‘general registration period’). It is intended all general registrants will be registered for a term that expires on the same day, for example, a 12 month period ending on 31 December. Subclause 56(2) specifies what happens when a person is registered part way through a general registration period.

Subdivision 7—Conditions of general registration

Consistent with the objects of the Act, the board has power to impose conditions on a person’s registration in certain circumstances, namely:

- at the time of initial general registration under part 3, division 2 (see clause 57, discussed below)
- at the time of initial specialist registration under part 3, division 8 (see clause 111, discussed below)
- at the time of initial special purpose registration under part 3, division 9 (see clause 125, discussed below)
- on renewal or restoration of general registration under part 3, divisions 4 & 5 (see clauses 74 & 76, discussed below)

- on renewal or restoration of specialist registration under part 3, division 8 (see clauses 74 & 76, as applied by clause 113, discussed below)
- on renewal of special purpose registration under part 3, division 9 (see clause 129, discussed below)
- on review of conditions on general registration under part 3, division 7 (see clause 94, discussed below); and
- on review of conditions on specialist registration under part 3, division 8 (see clause 94, as applied by clause 113, discussed below).

It is important to note that the board can not exercise its power to impose conditions on a person's registration under this Act, at any other time.

Clause 57 gives the board power to decide to register an applicant for general registration under clause 51, subject to conditions the board considers are necessary or desirable for the applicant to practise competently and safely. In practice, the board will make this determination by considering the extent to which the applicant is eligible for registration. It is intended that the board will exercise its power under this clause proactively to facilitate practitioners practising safely in accordance with their abilities, rather than automatically refuse to register applicants who are not fully eligible for registration, for example, because of health problems, language skills or previous convictions. It is anticipated that most conditions imposed under this clause will address fitness to practise issues under clause 45 (discussed above). However, it should be noted that there is nothing to prevent the board from imposing conditions to address concerns about the extent to which the applicant is qualified for registration under clause 44, discussed above, (for example, to require the person to undertake a refresher course relating to a specific aspect of practice).

Subclauses 57(2)—(4) specify the action the board must take when it decides to register an applicant on conditions. The board must:

- also decide the review period applying to the conditions. The term 'review period' is defined in the dictionary in Schedule 4 of the Act as a period of up to three years during which the registrant can not apply for a review of the conditions under part 3, division

- if the conditions imposed are ‘health conditions’, decide whether details of the conditions should be recorded in the register. The basis for the board’s decision in this regard is whether it is in the public interest for the details of the conditions to appear in the register
- give the applicant an information notice containing the information specified in subparagraphs (a)—(e) of the definition of this term in the dictionary in Schedule 4 of the Act, which information includes details of the conditions imposed. Having regard to the operation of clause 198 (discussed below), the board’s decision to register a person on conditions is a decision that may be appealed under part 6 of the Act.

It should also be noted that, subject to the operation of subclauses 57(3) & (4), the board is required under subparagraph 215(3)(g) to enter details of the conditions imposed on a person’s registration under this clause, on the register.

Clause 58 provides that it is an offence for a registrant to contravene a condition, including a recency of practice condition, imposed on his or her registration under this Act.

Division 3—Provisional general registration

Division 3 makes provision for provisional general registration. This form of general registration is to be used to ‘fast-track’ straight forward applications for general registration. Provisional general registration can not be renewed and may not be granted on conditions. The terms ‘provisional general registration’ and ‘provisional general registrant’ are defined in the dictionary in Schedule 4 of the Act.

Clause 59 defines ‘authorised person’ for the purpose of part 3, division 3. Subclause 59(2) clarifies that the board may limit the authority given to a person mentioned in subclause 59(1) to register persons as provisional general registrants.

Clause 60 specifies who may exercise the power to provisionally register and the circumstances in which the power may be exercised.

The power to provisionally register an applicant for general registration may be exercised where the applicant appears to be eligible for general registration without conditions but the board can not consider and decide the application immediately because:

- the next board meeting is not scheduled for some time;
- the applicant is unable to provide further evidence of his or her qualifications, for example, the applicant may have provided a photocopy of his or her academic record when the board requires a certified copy; or
- at the time of the application, the applicant is entitled to, but has not been conferred or awarded the qualification, for example, new graduates who complete their studies in December but do not officially graduate until the following March.

The power to provisionally register an applicant for general registration may be exercised by the board or an authorised person. Having regard to the definition of this term in clause 59 (discussed above), the board may authorise the Executive Officer, a member of staff of the Office of Health Practitioner Registration Boards or a board member to be an ‘authorised person’. It is important to note that clause 14 does not apply to the exercise of this power by an authorised person, as there is no delegation to the authorised person. When the board or an authorised person decides to provisionally register a person, the board or authorised person, as the case may be, must issue a certificate of provisional general registration to the person. Clause 63 specifies the form and contents of a certificate of provisional general registration (discussed below).

It is important to note that a person may not be provisionally registered on conditions.

Clause 61 applies when an authorised person decides to provisionally register an applicant for general registration. The authorised person must report to the board (either orally or in writing) for the purpose of enabling the board to decide whether the authorised person should have decided to provisionally register the applicant under clause 60. This is the basis on which the board must decide whether to confirm or cancel the person’s provisional general registration. If the board decides to cancel the provisional general registration, the board is required to give notice of its decision to the applicant.

Clause 62 specifies what action the board must take when it decides to cancel the person's provisional general registration under clause 61. The board must provide the person with a notice of cancellation which sets out the reason for the board's decision. It is important to note that the person is not entitled to an information notice under this clause, which means the board's decision to cancel provisional general registration can not be appealed. Notwithstanding the board's decision to cancel the person's provisional general registration, the board is still obliged to consider the person's application for general registration under part 3, division 2.

Clause 63 requires a certificate of provisional general registration to be in the approved form, which must include at least the information specified in subclause 63(2). There is nothing to prevent the inclusion of additional information in the approved form. The term 'certificate of provisional general registration' is defined in the dictionary in Schedule 4 of the Act.

Clause 64 specifies the period of provisional general registration as a period of up to six months decided by the authorised person or the board when deciding to provisionally register the person.

Clause 65 applies when the board decides to register a provisional general registrant as a general registrant under part 3, division 2. In these circumstances, the registrant's provisional general registration is cancelled and his or her general registration is 'back-dated' to the day the person was provisionally registered under clause 60.

Clause 66 applies when the board decides to refuse to register a provisional general registrant as a general registrant under part 3, division 2. In these circumstances, the registrant's provisional general registration is automatically cancelled.

Clause 67 applies when the period of a person's provisional general registration comes to an end after the timeframes specified in clauses 53 and 54 (discussed above) have expired and the board has not made a decision about the person's application for general registration. In these circumstances, the board is taken to have decided to refuse to register the person as a general registrant under part 3, division 2, on the expiry of the person's provisional general registration. Having regard to the operation of subclause 52(2), the person is entitled to receive an information notice and on this basis may appeal the board's 'default decision' under part 6 of the Act.

Division 4—Renewal of general registrations

Division 4 requires general registrants to apply for renewal of their registration and gives the board power to assess renewal applications, where recency of practice requirements are prescribed under clause 68 (discussed below). This is intended to ensure the ongoing competence of registrants, who will no longer be automatically entitled to re-registration upon payment of an annual licence fee.

It is important to note that, having regard to the definition of ‘general registrant’ (which expressly excludes provisional general registrants), this division does not apply to provisional general registrations.

Subdivision 1—Preliminary

Clause 68 defines ‘recency of practice requirements’ for the purpose of part 3, division 4. These are prescribed requirements, which if satisfied, demonstrate that a registrant has maintained an adequate connection with the profession. Subclause 68(2) provides examples of the range of activities that may constitute ‘practice’ for recency of practice purposes, including activities other than actual practice hours, which the board considers also keep registrants sufficiently up to date.

Subdivision 2—Applications for renewal of general registrations

Clause 69 requires the board to give registrants at least 60 days notice of the expiry of their general registration. General registrants may apply for renewal of their registration within this period (see clause 70, discussed below).

Clause 70 sets out the procedural requirements for making an application for renewal of general registration. Subclause 70(5) requires applicants to state:

- whether they suffer from any ongoing medical condition that adversely affects their ability to practise (all that is required is a yes/no response). The term ‘medical condition’ is defined in the dictionary in Schedule 4 of the Act. It is important note that the

board can only deal with this information as permitted under the *Health Practitioners (Professional Standards) Act 1999*; and

- if there are recency of practice requirements relevant to the applicant —the extent to which the applicant satisfies recency of practice requirements for the profession.

Clause 71 continues the applicant's existing general registration in force until the board makes a decision on the applicant's renewal application under *clause 73* and takes action under *clause 75* (both clauses discussed below) or the application is withdrawn. This provision does not affect the earlier suspension or cancellation of the registration under the legislative scheme.

Subdivision 3—Decision on applications

Clause 72 gives the board power to:

- investigate the applicant, for example, by making reasonable inquiries about the applicant;
- require the applicant to provide further information or documentation; and
- require the applicant to undergo a written, oral or practical examination to assess the applicant's ability to practise the profession. It should be noted that there is nothing to prevent the board from appointing an external body to set and administer the examination on the board's behalf.

Clause 72 requires the board to give the applicant notice of the board's intention to exercise the powers specified in subparagraphs 72(1)(b) & (c) within a reasonable minimum period of 30 days. An applicant who fails to comply with these requirements is taken to have withdrawn his or her application.

Clause 73 requires the board to consider an application that meets the requirements specified in *clause 70* (discussed above) and decide either to renew, or refuse to renew, the applicant's general registration. Subclause 73(2) specifies that the extent to which the applicant satisfies recency of practice requirements is the sole basis for the board's decision to renew, or refuse to renew, the applicant's registration. It is important to note that the

board may address concerns about the extent to which a registrant satisfies the recency of practice requirements, by imposing recency of practice conditions on the registration under clause 74 (discussed below). Subclause 73(3) clarifies that, in the absence of relevant recency of practice requirements, the board must decide to renew the applicant's registration.

Clause 74 gives the board power to decide to renew the applicant's general registration under this division, subject to 'recency of practice conditions' the board considers will address the extent to which the applicant does not satisfy the recency of practice requirements for the profession. It is intended that the board will exercise its power under this clause proactively to facilitate practitioners practising safely in accordance with their abilities, rather than automatically refuse to renew the registration of practitioners who have not satisfied relevant recency of practice requirements. It is important to note the board's power to impose recency of practice conditions under this clause is much narrower than the board's power to impose conditions on initial general registration under clause 57.

Subclauses 73(3) & (4) specify what action the board must take when making a decision to renew an applicant's registration on recency of practice conditions:

- Step 1: Before making the decision, the board must give the applicant an opportunity to make a submission on the proposed recency of practice conditions
- Step 2: If the board then decides to renew the applicant's registration on recency of practice conditions, the board must:
- also decide the review period applying to the conditions; and
 - give the applicant an information notice containing the information specified in subparagraphs (a)—(d) & (f) of the definition of this term in the dictionary in Schedule 4 of the Act, which information includes details of the recency of practice conditions imposed. Having regard to the operation of clause 198 (discussed below), the board's decision to renew a person's general registration on recency of practice conditions is a decision that may be appealed under part 6 of the Act.

Subclause 74(5) specifies when the board's decision to impose recency of practice conditions takes effect.

Clause 75 sets out what action the board must take when it decides an application under this division:

- if the board decides to renew the applicant's registration, it must as soon as practicable issue a new certificate of general registration to the applicant. It is anticipated that if the board decides to renew the registration on recency of practice conditions, the information notice required under clause 74 (discussed above) will be issued at the same time as the new registration certificate. Having regard to the operation of subclause 75(3), any conditions, including recency of practice conditions, attaching to the registration immediately before it is renewed under this section continue to apply to the renewed registration. This includes conditions imposed on the person's registration under the *Health Practitioners (Professional Standards) Act 1999* as well as conditions attaching to the registration because of the operation of subclause 250(3) (discussed below). It should also be noted that the board is required under subparagraph 215(3)(i) to enter details of the recency of practice conditions imposed on a person's registration under clause 74, on the register; or
- if the board decides to refuse to renew the applicant's registration, the board must give the applicant an information notice containing the information specified in paragraphs (a)—(d) of the definition of this term in the dictionary in Schedule 4 of the Act. Having regard to the operation of clause 198 (discussed below), the board's decision to refuse to renew an applicant's general registration is a decision that may be appealed under part 6 of the Act.

Division 5—Restoration of general registrations

Division 5 enables a person whose general registration has expired, to apply for restoration in limited circumstances. It is important to note, having regard to the definition of 'general registrant' (which expressly excludes provisional general registrants), that this division does not apply to provisional general registrations.

A person's general registration can only be restored under this division if the person meets the requirements for renewal of registration under part 3, division 4. In order to avoid unnecessary duplication of provisions, *clause 76* 'cross-applies' relevant provisions from part 3, division 4 for the purpose of applying for restoration and restoring general registration. With the exception of the matters expressly excluded under *clause 76* and those addressed in *clauses 77—81* (discussed below), this means that:

- the process of applying for restoration is the same as the process of applying for renewal;
- the board's powers for dealing with restoration applications are the same as those for dealing with renewal applications;
- the board has the power to decide to restore a person's registration on recency of practice conditions and details of those conditions must be entered on the register; and
- the board's decisions to restore a person's registration on recency of practice conditions or to refuse to restore a person's registration are decisions that may be appealed under part 6 of this Act.

It is important to note the operation of *clause 134* (discussed below), which clarifies that when the board decides to restore a person's registration under this division, the person is taken to be registered under part 3 of the Act.

Clause 77 specifies the time frame within which a person may apply for restoration ie within three months after the person's registration expired. A person who seeks restoration outside of this three month period must re-apply for registration under part 3, division 2.

Clause 78 sets out the procedural requirements for making an application for restoration of general registration. Subclause 78(3) requires applicants to state:

- whether they suffer from any ongoing medical condition that adversely affects their ability to practise (all that is required is a yes/no response). As noted above in relation to *clause 70*, the board can only deal with this information as permitted under the *Health Practitioners (Professional Standards) Act 1999*; and
- if there are recency of practice requirements relevant to the applicant —the extent to which the applicant satisfies recency of practice requirements for the profession.

Clause 79 specifies what happens when a person's registration is restored part way through a general registration period.

Clause 80 specifies that if the board decides to restore the person's registration, any conditions, including recency of practice conditions, attaching to the registration immediately before it expired continue to apply to the restored registration. This includes conditions imposed on the person's registration under the *Health Practitioners (Professional Standards) Act 1999* as well as conditions attaching to the registration as a result of the operation of subclause 250(3) (discussed below).

Clause 81 specifies when recency of practice conditions imposed on a restored registration, take effect.

Division 6—Cancellation of general registrations

Division 6 gives the board a very limited power to cancel a person's general registration under this Act.

Clause 82 specifies that a person's general registration may be cancelled under this division if the person was registered because of a materially false or misleading representation or declaration, made at any time during an application process under part 3, division 2, 4 or 5, including during an inquiry conducted under those divisions.

Clauses 83—87 set out the procedure for cancelling a person's general registration under this Act. In accordance with the principles of natural justice, these clauses provide for the following show cause process to be followed before the board takes action to cancel the registration in circumstances where the board believes that the ground exists to cancel the registration:

- the board must issue the registrant with a written notice (a 'show cause notice') inviting the registrant to demonstrate why his or her registration should not be cancelled. It is important to note the operation of clause 114 (discussed below) in relation to a person who is both a general registrant and a specialist registrant or provisional specialist registrant;
- the board must consider all written representations made by the registrant;

- if, after considering the registrant's response to the show cause notice, the board no longer believes the ground exists to cancel the registration, the board must take no further action. In these circumstances the board must notify the registrant of its decision;
- the board may decide to cancel the registration if the registrant does not respond to the show cause notice, or if after considering the registrant's response, the board still believes the cancellation is warranted. In these circumstances, the board must give the registrant an information notice containing the information specified in paragraphs (a)—(d) & (g) of the definition of this term in the dictionary in Schedule 4 of the Act. Having regard to the operation of clause 198 (discussed below), the board's decision to cancel a person's general registration under this division is a decision that may be appealed under part 6 of the Act. Subclause 86(5) specifies when the board's decision to cancel the person's registration takes effect. Clause 87 requires the person to return his or her certificate of registration to the board within 14 days after receiving the information notice. It is an offence for the person not to comply with this obligation.

Division 7—Reviewing conditions of general registrations

Division 7 gives the board power to review conditions, including recency of practice conditions, imposed on a person's general registration under this Act. It is important to note that this division does not apply to conditions imposed on a person's registration under the *Health Practitioners (Professional Standards) Act 1999*.

Subdivision 1—Review of conditions imposed by the board or District Court

Clause 88 limits the conditions that may be reviewed under this division to those imposed under this Act.

Clause 89 specifies how and when a registrant may start a review under this division. The review process is started when the registrant applies to the board for a review. Other than in the circumstances specified in clause

90 (discussed below), a registrant may not apply for a review during the review period applying to the conditions on her or his registration or while an appeal from the board's decision to impose the conditions is pending. The basis for an application for review under this division is that the registrant believes the conditions are no longer appropriate. Subclause 89(5) requires the board to consider and decide (ie confirm, remove or change the conditions) an application that meets the requirements specified in this clause.

Clause 90 permits a review to be started during the review period if:

- the board reasonably believes that the conditions are no longer appropriate (in practice, this may be because the registrant has approached the board with a reasonable argument why the conditions should no longer apply); and
- the board and the registrant agree in writing to an early review.

Clause 91 gives the board the same powers on review as it has for deciding an application for general registration under clause 46 (discussed above), namely the power to:

- investigate the registrant, for example, by making reasonable inquiries about the applicant
- require the registrant to provide further information or documentation; and
- require the registrant to undergo an examination (to assess the applicant's ability to practise the profession) or a health assessment (to assess the applicant's mental and physical capacity to practise the profession).

It is important to note that the board's powers under subparagraphs 91(1)(c) & (d) are solely for the purpose of assisting the board to determine whether the conditions remain necessary or desirable for the registrant to practise safely and competently (see clause 94, discussed below). In this respect, the exercise of these powers on review is much narrower than the exercise of the same powers when deciding an application for general registration under part 3, division 2. Clause 91, read in conjunction with subclauses 93(3) & (6), imposes similar timeframes and notice requirements to those imposed on the exercise of the board's powers under clause 46.

In order to avoid unnecessary duplication of provisions, *clause 92* ‘cross-applies’ clauses 47-50 for the purpose of a health assessment conducted under subparagraph 91(1)(d).

Subclauses 93(1)–(3) apply to a registrant who applied for a review under clause 89 and who fails to comply with the board’s requirements under clause 91. In these circumstances, the registrant is taken to have withdrawn his or her application. *Subclauses 93(4)–(6)* apply to a registrant whose conditions are being reviewed under clause 90 and who fails to comply with the board’s requirements under clause 91. In these circumstances, the board is taken to have decided to confirm the conditions.

Clause 94 sets out:

- the range of decisions available to the board after reviewing the registrant’s conditions, namely to either confirm, remove or change some or all of the conditions
- the basis for the board’s decision, namely whether the conditions remain necessary or desirable for the registrant to practise competently and safely. It is important to note that if the board decides to confirm or change the conditions, the board’s decision must be consistent with the reasons why the conditions were imposed in the first instance. The board can not use this opportunity to impose new conditions to address issues which are unrelated to the reasons why the conditions being reviewed were initially imposed. If new concerns about the registrant come to light while the person is registered, these must be addressed under the *Health Practitioners (Professional Standards) Act 1999*. The review process under this division can not be used as an alternative to the disciplinary or impairment processes under the *Health Practitioners (Professional Standards) Act 1999*
- what action the board must take when it makes a decision. The board must give the registrant notice if it decides to remove the conditions. If the board decides to confirm or change the conditions, the board must:
 - decide the review period applying to the confirmed or changed conditions; and
 - give the registrant an information notice containing the information specified in subparagraphs (a)—(d) & (h)/(i) of the definition of this term in the dictionary in Schedule 4 of

the Act. Having regard to the operation of clause 198 (discussed below), the board's decision to confirm or change the conditions is a decision that may be appealed under part 6 of the Act.

It should be noted that clause 98 (discussed below) may also apply if the board decides to change the conditions.

It should also be noted that, subject to the operation of clause 98 (discussed below), the board is required under subparagraph 215(3)(g) to enter details of the conditions imposed on a person's registration under this clause on the register.

Clause 95 specifies when the board's decision under clause 94 takes effect.

Clauses 96 & 97 set out the timeframes within which the board must decide a review under clauses 89 & 90 respectively. It is important to note that if the board fails to make a decision within these timeframes, the board is taken to have decided to remove the conditions.

Clause 98 applies if the board decides to change conditions that were initially imposed because of the registrant's mental and physical health. In these circumstances, the board must also decide whether details of the changed conditions should be recorded in the register. The basis for the board's decision in this regard is whether it is in the public interest for the details of the changed conditions to appear in the register.

Subdivision 2—Recording change, or removal, of conditions

Clause 99 applies if the board decides to change or remove the registrant's conditions and take the action required under clause 94 or if the registrant's conditions are removed because the board failed to make a decision within the timeframes specified in clauses 96 or 97 (discussed above). Clause 99 requires the registrant to return his or her certificate of registration to the board, so that the certificate can be amended or reissued to reflect the board's decision or 'default' decision (as the case may be). It is an offence for the registrant to fail to comply with this requirement.

Division 8—Specialist Registration

This division provides for registration in a prescribed specialty. This category of registration can be granted with or without conditions. Conditions imposed on a specialist registration can be reviewed under part 3, division 7, as applied by clause 113. A specialist registration can be renewed under part 3, division 4 and restored under part 3, division 5, as applied by clause 113. The terms ‘specialist registration’ and ‘specialty’ are defined in the dictionary in Schedule 4 of the Act.

Subdivision 1—Applications

Clause 100 sets out the procedural requirements for making an application for specialist registration.

Subdivision 2—Eligibility for specialist registration

Clause 101 sets out the criteria which the board must consider when deciding whether an applicant is eligible for specialist registration in a specialty. It is important to note that only persons who are general registrants may apply for specialist registration. The qualifications required for specialist registration are detailed in clause 102 (discussed below). It should be noted that there is no requirement for applicants for specialist registration to demonstrate fitness to practise (as is the case for general registration). This is because the applicant’s fitness to practise will have already been taken into account in the context of his or her general registration. Subclause 101(2) clarifies that the board may address concerns about an applicant’s eligibility for specialist registration by imposing conditions on the registration under clause 111 (discussed below).

Clause 102 specifies the circumstances in which an applicant is qualified for specialist registration in a specialty, as required under subparagraph 101(1)(b). It is intended that the qualifications prescribed under subparagraph 102(1)(a) will be current postgraduate Australian and New Zealand qualifications in the specialty obtained by coursework after at least three years full-time study (or an equivalent period of accelerated or part-time study).

Subparagraph 102(1)(b) applies to applicants who apply for specialist registration in a specialty on the basis of a qualification in the specialty that is not prescribed under subparagraph 102(1)(a). It should be noted that subparagraph 102(1)(b) operates in conjunction with subclause 102(2), which sets out matters the board may take into account when deciding whether an applicant is qualified under subparagraph 102(1)(b). The board may obtain advice from an external body for this purpose. In this regard, it is intended that the board will work collaboratively with any nationally recognised bodies which have the function of accrediting, assessing and/or recognising qualifications in the specialty.

Subparagraph 102(1)(c) applies to applicants who are not qualified under subparagraphs 102(1)(a) or (b), for example, applicants who have a qualification in the specialty that does not meet the requirements under subparagraphs 102(1)(a) or (b) but who have significant practical experience in the specialty. It should be noted that the board is not obliged to set and administer the qualifying examination itself.

Subdivision 3—Inquiries into applications

Clause 103 gives the board power to:

- investigate the applicant, for example, by making reasonable inquiries about the applicant;
- require the applicant to provide further information or documentation; or
- require the applicant to undergo a written, oral or practical examination to assess the applicant's ability to practise the specialty. It should be noted that there is nothing to prevent the board from appointing an external body to set and administer the examination on the board's behalf.

Clause 103 requires the board to give the applicant notice of the board's intention to exercise the powers specified in subparagraphs 103(1)(b)&(c) within a reasonable minimum period of 30 days. An applicant who fails to comply with these requirements is taken to have withdrawn his or her application.

Subdivision 4—Decision on applications

Clause 104 requires the board to consider an application that meets the requirements specified in clause 100 (discussed above) and decide either to register, or refuse to register, the applicant as a specialist registrant in the specialty.

Clause 105 sets out what action the board must take when it makes a decision under clause 104 (discussed above):

- if the board decides to register the applicant, it must as soon as practicable issue an appropriate certificate of registration to the applicant.

It is important to note the operation of clause 134 (discussed below), which clarifies that when the board decides to register an applicant under this division, the person is taken to be registered under part 3. It is also important to note the operation of clause 109 (discussed below) which clarifies when the applicant's registration takes effect.

The terms 'specialist registrant' and 'certificate of specialist registration' are defined in the dictionary in Schedule 4 of the Act. Clause 108 specifies the form and contents of a specialist registration certificate, which include the specialty in which the person is registered (discussed below); or

- if the board decides to refuse to register the applicant, the board must give the applicant an information notice containing the information specified in paragraphs (a)—(d) of the definition of 'information notice' (which is located in the dictionary in Schedule 4 of the Bill). An information notice is a written notice which details the board's decision and the reasons for it and provides details regarding when and how the applicant may appeal the board's decision. Having regard to the operation of clause 198 (discussed below), the board's decision to refuse to register an applicant for specialist registration is a decision that may be appealed under part 6 of the Act.

Clause 106 sets out the timeframes within which the board must decide an application. These timeframes may be extended under clause 107 (discussed below). It is important to note that if the board fails to decide the

application within these timeframes (and the applicant is not provisionally registered under part 3, division 3, as applied by clause 113), the board is taken to have decided to refuse to register the applicant. Having regard to the operation of subclause 105(2), the person is entitled to receive an information notice and on this basis may appeal the board's 'default decision' under part 6 of the Act.

Clause 107 enables the board to extend the timeframes specified in clause 106 because of the complexity of the issues that need to be considered in deciding the application. In order to ensure that the applicant is aware of the status of his or her application, the board is required to give the applicant written notice that the timeframe for deciding the application has been extended.

Subdivision 5—Information in certificates of specialist registration

Clause 108 requires a certificate of specialist registration to be in the approved form, which must include at least the information specified in subclause 108(2). There is nothing to prevent the inclusion of additional information in the approved form.

Subdivision 6—Period of specialist registration

Clause 109 specifies the period of specialist registration as a prescribed period of up to three years (the 'specialist registration period'). It is intended all specialist registrants will be registered for a term that expires on the same day, for example, a 12 month period ending on 31 December. Subclause 109(2) specifies what happens when a person is registered part way through a specialist registration period.

Subdivision 7—Conditions of specialist registration

As discussed above in relation to the board's power to impose conditions on a person's registration, the board has power to impose conditions on a person's specialist registration in certain circumstances.

However, it is important to note that *clause 110* specifies that a person's specialist registration is automatically subject to the same conditions, other than recency of practice conditions, attaching to his or her general registration. This ensures that, for example, any fitness to practise issues are appropriately managed in respect of the person's practice of the specialty. It is important to note that these 'automatically applied' conditions can not be reviewed under part 3, division 7, as applied by clause 113. This is because the conditions are reviewed in the context of the person's general registration. Having regard to the operation of clause 116 (discussed below), the board's decision on review of those conditions automatically applies in respect of the person's specialist registration.

It should also be noted that the board is required under subparagraph 215(3)(g) to enter details of the conditions automatically applied to a person's registration under this clause, on the register.

Clause 111 gives the board power to decide to register an applicant for specialist registration under clause 105, subject to conditions the board considers are necessary or desirable for the applicant to practise the specialty competently and safely. In practice, the board will make this determination by considering the extent to which the applicant is eligible for specialist registration. It is intended that the board will exercise its power under this clause proactively to facilitate practitioners practising safely in accordance with their abilities, rather than automatically refuse to register applicants who are not fully eligible for specialist registration. It is important to note that clause 110 (discussed above) does not limit the board's power to impose conditions on specialist registration.

Subclause 111(2) specifies the action the board must take when it decides to register an applicant on conditions. The board must:

- also decide the review period applying to the conditions; and
- give the applicant an information notice containing the information specified in subparagraphs (a)—(e) of the definition of this term in the dictionary in Schedule 4 of the Act, which information includes details of the conditions imposed. Having regard to the operation of clause 198 (discussed below), the board's decision to register a person on conditions is a decision that may be appealed under part 6 of the Act.

It should also be noted that the board is required under subparagraph 215(3)(g) to enter details of the conditions imposed on a person's registration under this clause, on the register.

Clause 112 makes it an offence for a specialist registrant to contravene a condition, including a recency of practice condition, imposed on his or her registration under this Act.

Subdivision 8—Application of certain provisions

This subdivision enables:

- applicants for specialist registration to be provisionally registered
- specialist registration to be renewed, restored or cancelled; and
- conditions imposed on specialist registration under clause 111 (discussed above) to be reviewed in much the same way as these processes apply to general registration.

In order to avoid unnecessary duplication of provisions, *clause 113* 'cross-applies' relevant provisions from part 3, divisions 3—7 for these purposes. This means that:

- an authorised person or the board has the power to provisionally register an applicant for specialist registration
- the requirements for and the process of applying for renewal or restoration of specialist registration are the same as the requirement for and the process of applying for renewal or restoration of general registration
- the board's powers for dealing with applications to renew or restore specialist registration are the same as those for dealing with applications to renew or restore general registration
- the board has the power to decide to renew or restore a person's specialist registration on recency of practice conditions and must enter details of these conditions on the register
- the board's decisions to renew or restore a person's specialist registration on recency of practice conditions or to refuse to renew or restore a person's specialist registration are decisions that may be appealed under part 6 of this Act

- any conditions attaching to the person's specialist registration immediately before renewal or before it expired, continue to apply to the renewed or restored registration
- the board may cancel specialist registration on the same ground and by the same show cause process that applies to general registration
- the board's decision to cancel specialist registration is a decision that may be appealed under part 6 of the Act
- conditions imposed on specialist registration (other than those automatically applied under clause 110) can be reviewed in the same way as conditions on general registration
- with the exception of the power to require the registrant to undergo a health assessment, the board has the same powers and obligations on review of conditions on specialist registration as it does on review of conditions on general registration
- the board's decision to change or confirm conditions on specialist registration is a decision that may be appealed under part 6 of the Act

Subclause 113(3) requires a certificate of provisional specialist registration to include details of the specialty in which the person is provisionally registered.

The terms 'provisional specialist registration', 'provisional specialist registrant' and 'certificate of provisional specialist registration' are defined in the dictionary in Schedule 4 of the Act.

Subdivision 9—Miscellaneous

Clause 114 specifies that when the board gives a specialist registrant or a provisional specialist registrant a show cause notice in relation to the registrant's general registration, the show cause notice must also advise the registrant that if his or her general registration is cancelled under part 3, division 6 of the Act, his or her specialist registration or provisional specialist registration ends. This requirement reflects the operation of clause 115, discussed below.

Clause 115 provides that if a specialist registrant's or provisional specialist registrant's general registration ends under this Act, for example, because it is cancelled or it is not renewed or restored, his or her specialist registration or provisional specialist registration automatically ends on the same day. This is because general registration is a requirement for specialist registration and provisional specialist registration and if the registrant 'loses' his or her general registration, the registrant no longer meets the eligibility requirements for specialist registration or provisional specialist registration. In these circumstances, the registrant has an obligation to return his or her certificate of specialist registration or provisional specialist registration to the board. (When the registrant's general registration is cancelled, the board must include a direction to this effect in the information notice it is required to give to the registrant under part 3, division 6 of the Act).

Clause 116 provides that if the board changes or removes conditions (other than recency of practice conditions) on a specialist registrant's general registration, the same conditions on the registrant's specialist registration (ie those which were automatically applied to the registrant's specialist registration under clause 110, discussed above) are automatically changed in the same way or removed. In these circumstances, the registrant has an obligation to return his or her certificate of specialist registration to the board, to be amended or replaced (the board must include a direction to this effect in the information notice it is required to give to the registrant under part 3, division 7 of the Act).

Clause 117 specifies that when making a decision to restore a person's specialist registration, the board must only decide to restore the registration if the person's general registration is current, for example, the board can not decide to restore a person's specialist registration if the person's general registration has also lapsed but not been restored. The operation of this clause reflects clause 101 which specifies that general registration is a pre-requisite for specialist registration.

Clause 118 applies if conditions relating to mental or physical health are imposed on a specialist registrant's general registration under this Act, for example under clause 57 (discussed above) or those conditions are changed under this Act, for example under clause 94 (discussed above). In these circumstances, the decision about whether or not details of those conditions are recorded in the register applies in the same way to the same conditions which were automatically applied to the registrant's specialist registration under clause 110, discussed above.

Division 9—Special purpose registrations

Division 9 makes provision for the category of special purpose registration. This is a limited form of registration designed to extend the privileges and obligations of registration to persons undertaking a specified range of ‘special activities’. For this reason, special purpose registration is regarded as a ‘privilege’ registration category. Consistent with this approach, special purpose registration can be renewed but can not be restored and can be granted with or without conditions, but those conditions can not be reviewed. The terms ‘special purpose registration’ and ‘special purpose registrant’ are defined in the dictionary in Schedule 4 of the Act.

Subdivision 1—Applications for special purpose registration

Clause 119 specifies that a person may obtain special purpose registration for the limited purpose of postgraduate study or training; teaching; research and/or giving clinical demonstrations in the profession. This means that a special purpose registrant has the same privileges (for example, the right to use a restricted title or to undertake a restricted practice) and the same obligations (for example, a special purpose registrant is subject to the *Health Practitioners (Professional Standards) Act 1999*) as a general registrant under the legislative scheme, within the limited scope of the special activity or activities to which his or her registration under this division relates.

It is important to note that clause 119 is not intended to prevent a person from undertaking a special activity without registration under this division. Rather, it is intended to extend the benefits and obligations of registration to a person in circumstances where, in the course of undertaking a special activity, the person would otherwise contravene the Act, for example, by using a restricted title or undertaking a restricted practice.

The process for applying for and obtaining special purpose registration is closely modelled on the general registration processes under part 3, division 2. In order to avoid unnecessary duplication of provisions, *clause 120* ‘cross-applies’ relevant provisions from part 3, divisions 2 & 3 for the purpose of applying for special purpose registration and registering a person as a special purpose registrant under this division. With the exception of the matters addressed in clauses 120—126 (which deal with eligibility and

period of special purpose registration and the imposition of conditions, discussed below), this means that:

- the process of applying for special purpose registration is the same as the process of applying for general registration;
- the board's powers for dealing with applications for special purpose registration are the same as those for dealing with applications for general registration;
- an authorised person or the board has the power to provisionally register an applicant for special purpose registration;
- the process and timeframes for deciding an application for special purpose registration and registering a special purpose registrant are the same as those for deciding an application for general registration and registering a general registrant; and
- the board's decision to refuse to register an applicant for special purpose registration is a decision that may be appealed under part 6 of this Act.

The terms 'provisional special purpose registration' and 'provisional special purpose registrant' are defined in the dictionary in Schedule 4 of the Act.

Subclause 120(2) requires a certificate of special purpose registration or provisional special purpose registration to include additional details about the special activity for which the registrant is registered, for example, to teach the profession at a specified educational institution for a specified period. Also, if the special activity involves the practice of a specialty, the certificate must include details of the specialty to be practised. The terms 'certificate of special purpose registration' and 'certificate of provisional special purpose registration' are defined in the dictionary in Schedule 4 of the Act.

Clause 121 sets out the criteria which the board must consider when deciding whether an applicant is eligible for special purpose registration. The criteria are specified in detail in clauses 122 and 123 respectively (discussed below).

Clause 122 provides that an applicant for special purpose registration meets the eligibility requirement specified under subparagraph 121(a) if the applicant has a qualification in the profession that is recognised by the board. Subclause 122(2) lists a range of matters the board may take into

account when deciding whether to recognise an applicant's qualification. The board may obtain advice from an external body for this purpose. In this regard, it is intended that the board will work collaboratively with any nationally or internationally recognised bodies which have the function of accrediting, assessing and/or recognising local and/or foreign qualifications in the profession.

Clause 123 sets out the matters the board may take into account when considering whether an applicant is a suitable person to be a special purpose registrant, as required under subclause 121(b). These include whether:

- the applicant has been convicted of an indictable offence or an offence against health practitioner legislation in any jurisdiction; and
- the applicant's registration in another jurisdiction has been affected in any way (for example, by the imposition of conditions) and the reason why it has been affected.

Clause 124 specifies the period of special purpose registration as a period of up to one year decided by the board when deciding to register the applicant as a special purpose registrant.

Clause 125 gives the board power to decide to register an applicant for special purpose registration under this division, subject to conditions the board considers are necessary or desirable for the applicant to competently and safely undertake the special activity to which the application relates. In practice, the board will make this determination by considering the extent to which the applicant is eligible for registration. As noted in relation to clause 57 (discussed above) it is intended that the board will exercise its power under this clause proactively to facilitate practitioners practising safely in accordance with their abilities, rather than automatically refuse to register applicants who are not fully eligible for registration.

Subclause 125(2) specifies what action the board must take when it decides to register an applicant under this division on conditions. The board must give the person an information notice containing the information specified in subparagraphs (a)—(d) of the definition of this term in the dictionary in Schedule 4 of the Act, which information includes details of the conditions imposed. Having regard to the operation of clause 198 (discussed below), the board's decision to register a person as a special purpose registrant on conditions is a decision that may be appealed under part 6 of the Act.

It is important to note that conditions imposed on a person's special purpose registration can not be reviewed under part 3, division 7. Instead the board has the power to remove conditions imposed under this clause at any time (see clause 133, discussed below). In addition, conditions attaching to a person's special purpose registration immediately before it is renewed under part 3, division 9, subdivision 2 do not continue to apply to the renewed registration (see clause 129, discussed below).

It should also be noted that the board is required under subparagraph 215(3)(g) to enter details of the conditions imposed on a person's special purpose registration under this clause, on the register.

Clause 126 provides that it is an offence for a special purpose registrant to contravene a condition imposed on his or her registration under this Act.

Subdivision 2—Renewal of special purpose registrations

The requirement to apply for renewal of special purpose registration and the process of applying for and obtaining renewal are very closely modelled on the requirements of part 3, division 4 that apply to general registration. In order to avoid unnecessary duplication of provisions, *clause 127* 'cross-applies' relevant provisions from part 3, division 4, subdivisions 2 & 3 for the purpose of applying for renewal and renewing special purpose registration. With the exception of the requirement to demonstrate recency of practice and the power to impose recency of practice conditions, this means that:

- the process of applying for renewal of special purpose registration is the same as the process of applying for renewal of general registration;
- the board's powers for dealing with applications to renew special purpose registration are the same as those for dealing with applications to renew general registration; and
- the board's decision to refuse to renew an applicant's special purpose registration is a decision that may be appealed under part 6 of this Act.

The criteria for renewal of special purpose registration differ from those for renewing general registration, in that recency of practice requirements do not apply. *Clause 128* specifies that the basis for the board's decision to

renew, or refuse to renew, a person's special purpose registration is whether the person continues to be a suitable person for special purpose registration. This means that the board may consider the matters set out in clause 123 (discussed above) when deciding a renewal application under this division.

Clause 129 gives the board power to decide to renew a person's special purpose registration on conditions the board considers are necessary or desirable for the person to competently and safely undertake the special activity to which the registration relates. The board's power under this clause is the same as under clause 125 (discussed above).

Subclause 129(2) specifies what action the board must take when it decides to renew a person's special purpose registration on conditions. The board must give the person an information notice containing the information specified in subparagraphs (a)—(d) of the definition of this term in the dictionary in Schedule 4 of the Act, which information includes details of the conditions imposed. Having regard to the operation of clause 198 (discussed below), the board's decision to renew a person's special purpose registration on conditions is a decision that may be appealed under part 6 of the Act.

It is important to note that conditions imposed on the renewal of a person's special purpose registration can not be reviewed under part 3, division 7. Instead the board has the power to remove conditions imposed under this clause at any time (see clause 133, discussed below). In addition, subclause 129(3) clarifies that any conditions attaching to the person's registration immediately before renewal, do not continue to apply to the renewed registration.

It should also be noted that the board is required under subparagraph 215(3)(g) to enter details of the conditions imposed on a person's registration under this clause, on the register.

Clause 130 specifies the period of special purpose registration as a period of up to one year decided by the board when deciding to renew a person's special purpose registration.

It should be noted that division 9 does not give the board power to restore special purpose registration.

Subdivision 3—Cancellation of special purpose registrations

Subdivision 3 gives the board power to cancel a special purpose registration. The process of cancelling a special purpose registration mirrors the process for cancelling a general registration under part 3, division 6. In order to avoid unnecessary duplication of provisions, *clause 131* ‘cross-applies’ relevant provisions for the purpose of cancelling special purpose registration. With the exception of grounds for cancellation, this means that:

- the same show cause process applies; and
- the board’s decision to cancel special purpose registration is a decision that may be appealed under part 6 of the Act.

Clause 132 establishes grounds for cancelling a special purpose registration, namely the registrant:

- practised beyond the scope of the special activity or activities for which he or she obtained registration, for example, the registrant obtained employment in the profession to supplement his or her income while undertaking postgraduate training
- has been convicted of an indictable offence or an offence against health practitioner legislation
- contravened a condition of her or his registration; or
- was registered because of a materially false or misleading representation or declaration (this is the same as the ground for cancelling a general registration under part 3, division 6).

Subdivision 4—Removal of conditions

Clause 133 requires the board to decide to remove conditions imposed on a person’s special purpose registration under this Act if it reasonably believes the conditions are no longer required ie the board is satisfied that the person can undertake the special activity competently and safely without the conditions. In practice, this may be because the registrant has approached the board with a reasonable argument why the conditions should no longer apply. It is important to note that the board can not

exercise this power in respect of conditions imposed on the person's registration under the *Health Practitioners (Professional Standards) Act 1999*. The board must give the registrant notice of its decision to remove the conditions. Subclause 133(6) specifies when the board's decision takes effect. Subclauses 133(4) & (5) require the registrant to return his or her certificate of registration to the board, so that the certificate can be amended or reissued to reflect the board's decision. It is an offence for the registrant to fail to comply with this requirement.

Division 10—General provisions about registrations

Clause 134 clarifies that if under this Act, an entity (ie the board or a court deciding an appeal) decides to register a person or to restore a person's registration, the person is taken to be registered under part 3 of this Act.

Clause 135 enables a registrant to voluntarily surrender his or her registration by giving written notice to the board. It is an offence for the registrant to fail to return his or her registration certificate within 14 days after the surrender takes effect.

The terms 'certificate of registration' and 'notice' are defined in the dictionary in Schedule 4 of the Act.

Clause 136 gives the board power to grant or refuse to grant a registrant's application for the replacement of a lost, stolen, destroyed or damaged certificate of registration. If the board grants the application, the registrant is entitled to receive a replacement certificate, upon payment of the prescribed fee to the board. Having regard to the operation of subclause 136(5) and clause 198, the board's decision to refuse to grant the application is a decision that may be appealed under part 6 of the Act.

Clause 137 enables a registrant to obtain a certified copy of the registrant's certificate of registration, upon payment of the prescribed fee to the board. The term 'certified copy' is defined in the dictionary in Schedule 4 of the Act.

Clause 138 makes it an offence for a registrant to fail to advise the board (either orally or in writing) of a change in the registrant's circumstances that are prescribed under a regulation. The registrant must advise the board within 21 days of the change occurring.

Clause 139 applies when a person's general, specialist or special purpose registration is affected under this Act either by cancellation, the imposition of conditions or removal of those conditions. In these circumstances the board must notify all Australian and New Zealand regulatory authorities with which the board knows the person is registered, of the event. This provision also gives the board discretion to notify other entities, specified in subclause 139(3), of these events. However, the board may only exercise this discretion if it believes that the entity needs to know about the event and that notifying the entity will assist in achieving the objectives of this Act. The terms 'interstate regulatory authority' and 'foreign regulatory authority' are defined in the dictionary in Schedule 4 of the Act. The terms 'impose' and 'State regulatory authorities' are defined in subclause 139(6).

PART 4—OBLIGATIONS OF REGISTRANTS AND OTHER PERSONS

The term 'professional service', which is used throughout part 4, is defined in the dictionary in Schedule 4 of the Act to mean a dental service, including a dental specialist service.

Division 1—Restricted titles and holding out

Clause 140 is one of the key offence provisions in the Bill. The objective of this clause is to protect health consumers by enabling them to distinguish between (competent and safe) registrants and other persons who are not registered under this Act. It is necessary to extend this protection beyond a person claiming to be registered under this Act (which is addressed by clause 143, discussed below), as health consumers will associate certain titles, names, initials etc (either directly or indirectly) with registrants. This extra protection is particularly warranted as health service providers may not hold themselves out as being *registrants*, but are more likely to use other names, descriptions etc in advertising or other means of communicating their services to health consumers.

This policy objective is firstly achieved, in subclause 140(1), by restricting the taking or use of a restricted title to registrants. (The term ‘restricted title’ is defined in the dictionary in Schedule 4 of the Act as a title that consists of, or includes, the words ‘dentist’, ‘dental practitioner’, ‘dental surgeon’ or ‘surgeon dentist’). The concept of a person taking or using a title is generally understood to mean the person adopts or uses a descriptive or distinctive name or designation, especially where the name or designation belongs to a person by right of attaining some office, qualification, status or authorisation. Subclause 140(1) provides examples of persons taking or using a restricted title. It should be noted that it is possible for a corporation to take or use a restricted title (as provided in the examples), however, a corporation can only lawfully take or use a restricted title if it came within the exemption provided in subclause 140(2). A person may also be held to be taking or using a restricted title if the person stated—“*I am a dentist*”.

Subclause 140(2) allows persons, who are not registrants, to use a restricted title in limited circumstances. This provision essentially allows a person who has a business that employs, or otherwise engages, registrants to provide dental services to use ‘dentist’, ‘dental practitioner’, ‘dental surgeon’ or ‘surgeon dentist’ in its business name. (The term ‘business name’ is broadly defined in the dictionary in Schedule 4 of the Act to mean a name or style under which a business is carried on). This provision should be read in conjunction with subclause 140(4) (discussed below). Subclause 140(3) also provides a limited exemption to the offence under subclause 140(1). This provision allows a person undergoing study or training to obtain a qualification for registration to, for example, wear a ‘student dentist’ badge. It should be noted that this exception only applies when the person takes or uses the restricted title while actually undertaking the study or training.

Subclause 140(4) is a corollary to subclause 140(1) and applies, for example, to an owner or manager of a business in relation to his or her employees or staff. Subclause 140(5) is a corollary to subclause 140(3) and provides an exemption to the offence under subclause 140(4) for persons ‘holding out’ dentistry students in limited circumstances.

Subclause 140(6) covers other circumstances where a person may mislead health consumers into believing the person is a dental practitioner. The provision also covers circumstances where a person claims to be authorised or qualified to practise dentistry. A person claiming to be authorised to practise the profession may mislead consumers into believing

he or she has a legal authority to practise dentistry, for example, by stating that he or she is *licensed* or *approved* to practise dentistry. (It should be noted that clause 143 only deals with circumstances where a person claims to be actually registered *under this Act*. Also it should be noted that a person may claim to be a dental practitioner (and therefore mislead health consumers) without necessarily claiming to be registered under this Act). The nature of the offence means that it effectively only applies to individuals.

Subclause 140(7) is a corollary to subclause 140(6) and applies, for example, to an owner or manager of a business in relation to his or her employees or staff.

Having regard to the objects of the Act and the potential for the behaviour targeted by this provision to seriously compromise public health and safety, the offences under subclauses 140(1) & (4) are punishable by a maximum penalty of 1000 penalty units.

Similarly to clause 140 (discussed above), *clause 141* operates to protect health consumers in relation to the taking and use of restricted specialist titles. The objective of this clause is to enable consumers to distinguish between specialist registrants and other persons (registrants or non-registrants) who are not registered under this Act in a specialty. Clause 141(1) restricts the taking or use of a restricted specialist title for a specialty to specialist registrants and provisional specialist registrants in the specialty. (The term ‘restricted specialist title’, for a specialty, is defined in the dictionary in Schedule 3 of the Act as a title that consists of or includes words prescribed under a regulation for the specialty. It is intended that the words prescribed will be those commonly used by recognised specialties, for example, ‘orthodontist’ for the specialty of orthodontics).

Subclause 141(2) allows persons who are not registered or provisionally registered under this Act in a specialty to use a restricted specialist title for the specialty in limited circumstances. For example, a person who has an orthodontic practice that employs or otherwise engages registered orthodontists to provide orthodontic services is permitted to use the title ‘orthodontist’ in the business name of the practice. This provision should be read in conjunction with subclause 141(4), discussed below. Subparagraph 141(3)(a) also provides a limited exception to the offence under subclause 141(1). It should be noted that this exception only applies when the person takes or uses a restricted specialist title while actually undertaking training in the specialty.

It should be noted that subparagraph 141(3)(b) also permits the use of a restricted specialist title for a specialty by special purpose registrants and provisional special provisional registrants whose registration involves the practice of the specialty ie registrants whose certificate of special purpose registration (or provisional special purpose registration) includes details of the specialty as required under subclause 120(2), discussed above.

Subclause 141(4) is a corollary to subclause 141(1) and applies, for example, to an owner or manager of a specialist dental practice in relation to his or her employees or staff. Subclauses 141(5) & (6) are a corollary to subclause 141(3) and provide exemptions in limited circumstances to the offence under subclause 141(4) for special purpose registrants and provisional special purpose registrants and persons holding out other persons undertaking specialist training.

Subclause 141(7) deals with circumstances where a person (regardless of whether or not the person is registered under this Act) may mislead health consumers into believing the person provides dental services in an area that is not a prescribed specialty. For example, a person may mislead consumers by calling himself or herself a ‘cosmetic dental specialist’ or a ‘specialist dentist’ in an area which is not a prescribed specialty under this Act. Subclause 141(8) is a corollary to subclause 141(7) and applies, for example, to an owner or manager of a dental practice in relation to his or her employees or staff.

Clause 142 exempts registrants who use the title ‘doctor’ in the circumstances specified in subparagraphs (a) or (b), from the offence provision contained in the *Higher Education (General Provisions) Act 1993* regarding the higher education award of the status, title or description of ‘doctor’.

Clause 143 makes it an offence for a person who is not a registrant to:

- claim or hold out to be registered, or to be eligible to be registered, under this Act; or
- allow himself or herself to be held out as being registered under this Act.

Having regard to the objects of the Act and the potential for the behaviour targeted by this provision to seriously compromise public health and safety, this offence is punishable by a maximum penalty of 1000 penalty units.

Clause 144 makes it an offence for a person to hold out another person as being registered under this Act, if that person knows or ought reasonably to know that the other person is not registered under this Act. For example, the owner of a dental practice must not hold out that an individual employee is a registered dentist, if the owner knows the employee is not registered under this Act. Subclauses 144(2) & (3) make it an offence for a person to hold out another person as being:

- a specialist registrant per se (ie registered under part 3, division 8 of this Act); or
- registered under part 3, division 8 of this Act in a particular specialty

if that person knows or ought reasonably to know that the other person is not a specialist registrant per se or is not registered under part 3, division 8 of this Act in the particular specialty, as the case may be.

Having regard to the objects of the Act and the potential for the behaviour targeted by this provision to seriously compromise public health and safety, these offences are punishable by a maximum penalty of 1000 penalty units.

Clause 145 makes it an offence for a person who is a specified category or subcategory of registrant to:

- claim or hold out to be, or to be eligible to be, another category of registrant under this Act; or
- allow himself or herself to be held out as being another category of registrant.

Clause 146 makes it an offence for a person who is provisionally registered in a category of registration to:

- claim or hold out to hold, or to be eligible to hold, 'full' registration in that category; or
- allow himself or herself to be held out as holding 'full' registration in that category.

Clause 147 makes it an offence for a registrant who is registered on conditions to:

- claim or hold out to be registered without those or any conditions; or
- allow himself or herself to be held out as being registered without those or any conditions.

Division 2—Notification of business names and other details

Clause 148 makes it an offence for a person to fail to provide the board with certain identifying information about the conduct of a person's dental practice namely:

- if a registrant carries on the practice under a business name other than his or her own name—the business name
- if an individual who is not a registrant carries on the practice (regardless of whether he or she carries on the practice on behalf of another person or group of persons)—the business name under which the practice is carried on and the individual's name and address
- if a corporation carries on the practice—(i) the business name under which the practice is carried on, (ii) the name and principal address of the corporation and (iii) if the corporation is a corporation under the Corporations Law—the names and addresses of the directors of the corporation, or otherwise—the names and addresses of the members of the governing body of the corporation. For example, if an association incorporated under the *Associations Incorporation Act 1981* carries on the practice, the association must provide the names and addresses of the members of the management committee; if a co-operative carries on the practice, the co-operative must provide the names and addresses of the members of the board of directors.

The operation of this provision is not affected by the fact that a business name is not registered under the *Business Names Act 1962*.

The purpose of this provision is to enable the board to keep abreast of the affiliations of both registrants and non-registrants with particular practices. This will assist in the efficient administration of the Act, for example, this information is used to identify persons who advertise a dental service or a dental practice (see clause 151, discussed below). It is important to note the operation of clause 259 (discussed below) which provides an amnesty of six months duration from the commencement of this Act in respect of the offence under this clause.

It should be noted that the board has no role or power to approve business names notified to it under this clause. It is also important to note that the offence under this provision is failure to notify a business name, not the actual carrying on of the business.

Clause 149 makes it an offence for a person, who has provided information to the board under clause 148 (discussed above), to fail to notify the board of a change in that information. Subclause 149(3) provides the person with a 14 day ‘period of grace’ within which he or she does not contravene this provision.

Division 3—Advertising

Clause 150 makes it an offence for a person to advertise a dental service or a dental practice in certain ways. An inclusive definition of the term ‘advertise’ is located in the dictionary in Schedule 4 of the Act and covers any form of advertising, for example newspaper advertisements, signage and electronic advertising. The advertising restrictions imposed under this clause are focussed on ‘fair trading’ principles, the provision of adequate information to consumers and the protection of the public. Specifically, this provision requires that advertising must not:

- be false, misleading or deceptive, for example, advertising which creates an unreasonable expectation of beneficial treatment outcomes by falsely alluding to treatment outcomes
- offer an inducement, without setting out the terms and conditions applying to the inducement
- refer to, use or quote from endorsements or testimonials, for example, unsubstantiated claims by persons who may not be qualified to make such claims or claims made in response to financial incentives, which could adversely influence consumers’ ability to make informed decisions or choices. It should be noted that this provision is targeted at this form of advertising in the public domain, not the use of references etc by registrants in job applications or tender documents

- disparage another registrant, dental practice or dental services provided by another person or practice, for example, by unfavourably contrasting services provided by one registrant with services provided by another registrant
- promote a harmful or potentially harmful dental service. For example, advertising of procedures, techniques or services which have no proven therapeutic benefit but have resulted in injuries to persons
- promote a registrant as having expertise in an area of practice, unless the registrant has the skills, knowledge, training or qualifications to practise in the area.

Subclause 150(4) excludes printers or publishers, for example the Yellow Pages, from the operation of this offence provision, in circumstances where he or she merely prints or publishes an advertisement as part of his or her business, for another person.

It should be noted that this provision is intended to operate in addition to and not in derogation of the *Fair Trading Act 1989*.

Clause 151 makes it an offence for a person who advertises a dental service or a dental practice without stating certain identifying information in the advertisement, namely:

- where a registrant provides the service or carries on the practice advertised, in his or her own name—the registrant's name; or
- otherwise —the business name notified to the board under clause 148 (discussed above).

The purpose of this provision is to enhance the board's ability to enforce clause 150 by assisting the board to identify persons who advertise dental services or practices. It is important to note the operation of clause 259 (discussed below) which provides an amnesty of six months duration from the commencement of this Act in respect of the offence under this clause.

Clause 151(2) excludes printers or publishers, for example the Yellow Pages, from the operation of this offence provision, in circumstances where he or she merely prints or publishes an advertisement as part of his or her business, for another person.

Division 4—Registrants' autonomy

Clause 152 makes it an offence for a person to aid, abet, counsel, procure or induce (including by threats or promises) a registrant to engage in conduct which could result in the registrant being disciplined under the *Health Practitioners (Professional Standards) Act 1999*. This is a key offence provision in the Act which is targeted at both registrant and non-registrant owners or managers of a dental practice, or other persons in a position of influence over a registrant, who engage in conduct, implement policies etc which interfere with or compromise the professional independence or clinical activities of registrants. For example, this may involve imposing an unreasonable quota on the number of consultations per week; restricting the length of consultations, requiring registrants to use inferior equipment or products or encouraging over-servicing. Having regard to the objects of the Act and the potential for the behaviour targeted by this provision to seriously compromise public health and safety, this offence is punishable by a maximum penalty of 1000 penalty units.

Division 5—Court orders and injunctions

Clause 153 enables a court sentencing a person for an offence specified in subclause 153(1), to prohibit or impose conditions or restrictions on that person's involvement in the provision of health services. The intention of this provision is to allow a court to impose a more substantial sanction for serious and/or repeat offenders under part 4 of the Act. For example, the court may make an order prohibiting or restricting a person's involvement in the provision of a specific health service or health services generally; an order prohibiting the person from having a financial interest in a business providing a health service (for example, being an owner or part owner of a business); or an order prohibiting or restricting a person (including a corporation) from entering into commercial arrangements, such as a lease, with a health service provider. It is important to note that the term 'health service' is broadly defined in the dictionary in Schedule 4 of the Act, and includes dental services.

Clause 154 confers power on the Magistrates Court and the District Court to hear and decide an application for an injunction in relation to the conduct or failure specified in subclause 154(1) and sets out the court's

powers to grant a range of injunctions. It should be noted that whereas the Magistrates Court may only exercise its powers under this clause when proceedings for an offence against this Act are pending before it, the District Court may exercise these powers at any time.

Division 6—Reprisals

Clause 155, which is based on section 388 of the *Health Practitioners (Professional Standards) Act 1999*, makes it unlawful for anyone to take a reprisal against a person for giving information, assistance or evidence to the board, an inspector or a court in relation to an alleged contravention of specified provisions of the Act. This clause also establishes a test for determining when an unlawful reprisal has taken place.

Clause 156, which is based on section 389 of the *Health Practitioners (Professional Standards) Act 1999*, makes it an offence for a person to take a reprisal within the meaning of clause 155 (discussed above). Having regard to the operation of clause 207 (discussed below), the taking of a reprisal is an indictable offence.

Clause 157, which is based on section 390 of the *Health Practitioners (Professional Standards) Act 1999*, entitles a person who suffers detriment as the result of the taking of a reprisal within the meaning of clause 155, to sue for damages. It also sets out the procedure and powers of the court for dealing with a claim for damages under this provision.

Division 7—Other provisions

Clause 158 makes it an offence for a registrant or a person carrying on a business providing dental services (the ‘service provider’) to give or receive ‘kickbacks’, (ie payment or other benefits) in exchange for the referral of consumers to or from the service provider or the service provider’s business.

It is important to note that whereas the focus of subclause 158(2) is on the giving of kickbacks to any person, including a non-health service provider; the focus of subclause 158(3) is on the receipt of kickbacks for the referral of clients to another health service provider. This clause is intended

to address concerns that consumers' health could be compromised by referral arrangements which are based on financial or non-financial benefit, rather than consideration of the individual consumer's best interests.

PART 5—INVESTIGATION AND ENFORCEMENT

Part 5 makes provision for the inspectorial powers required by the board for the purpose of investigating alleged offences against this Act. It is important to note that the investigation of potential disciplinary matters is conducted under the *Health Practitioners (Professional Standards) Act 1999*.

Division 1—Inspectors

Clause 159 specifies that an inspector has the function of conducting investigations and inspections to enforce compliance with this Act. The term 'inspector' is defined in the dictionary in Schedule 4 of the Act.

Clause 160 specifies that an inspector has the powers given to that person under this Act.

Clause 161 provides for the powers of an inspector to be limited under an instrument of appointment.

Division 2—Appointment of inspectors and other matters

Clause 162 specifies the persons who may be appointed by the board as inspectors. Persons, other than a board member or the Executive Officer, appointed as inspectors under this provision, are required to have the necessary expertise or experience to be an inspector.

Clause 163 sets out some 'machinery' provisions in relation to the conditions and term of appointment of inspectors.

Clause 164 requires the board to give inspectors identity cards, and sets out the information to be included on an identity card.

Clause 165 makes it an offence for a person who ceases to be an inspector, to fail to return his or her identity card to the board, unless the person has a reasonable excuse.

Clause 166 requires an inspector to first produce or display his or her identity card before exercising any powers under this Act. However, provision is also made for the inspector to produce the card at the first reasonable opportunity where it is not immediately practicable to do so.

Division 3—Powers of inspectors

Subdivision 1—Entry of places

Clause 167 is a ‘standard provision’ setting out the circumstances in which an inspector may enter a place. The terms ‘occupier’, ‘place’, ‘premises’ and ‘public place’ are defined in the dictionary in Schedule 4 of the Act.

Subdivision 2—Procedure for entry

Clause 168 outlines the procedures an inspector must follow when seeking consent to enter any place.

Clause 169 makes provision for an inspector to apply to a magistrate for a warrant to enter a place. Under this provision, a magistrate may refuse to consider an application until the inspector provides the magistrate with the information he or she has requested.

Clause 170 sets out the grounds on which a magistrate may issue a warrant and specifies the information that must be stated in a warrant.

Clause 171 makes provision for an inspector to apply for a warrant by telephone, facsimile, radio or other form of communication because of urgent or other special circumstances.

Clause 172 outlines the procedures that must be followed by an inspector prior to entering a place under a warrant.

Subdivision 3—Powers after entry

Clause 173 sets out what an inspector who has entered a place under clause 167 is empowered to do while in that place.

Clause 174 makes it an offence for a person to fail to give reasonable help to an inspector under subparagraph 173(3)(f), unless the person has a reasonable excuse.

Clause 175 makes it an offence for a person to fail to provide information to an inspector under subparagraph 173(3)(g), unless the person has a reasonable excuse.

Subdivision 4—Power to seize evidence

Clause 176 sets out the power of an inspector to seize a thing at a place entered *without* consent or a warrant. In these circumstances, the inspector must reasonably believe the thing to be seized is evidence of an offence against this Act.

Clause 177 sets out the powers of an inspector to seize a thing at a place entered *with* consent or a warrant. In these circumstances an inspector may exercise the power to seize evidence if the inspector:

- obtained the necessary consent to enter the place; reasonably believes the thing to be seized is evidence of an offence against this Act and the seizure of the thing is consistent with the purpose of entry stated to the occupier; or
- is authorised to enter the place under a warrant and the seizure is authorised by the warrant; or
- reasonably believes another thing at the place is evidence of an offence against this Act and needs to be seized to secure evidence or to prevent continuing or repeat offences; or
- reasonably believes a thing at the place has just been used in committing an offence against this Act.

Clause 178 sets out what an inspector may do to secure a thing seized under this subdivision, for example, to preserve its evidentiary value.

Clause 179 makes it an offence for a person to tamper, or attempt to tamper, with a thing seized under this subdivision, or something restricting access to the thing.

Clause 180 sets out what action an inspector may require a person in control of a thing to take, in order to enable the thing to be seized under this subdivision. Subclause 180(4) makes it an offence for the person to fail to comply with a requirement under this provision, unless the person has a reasonable excuse.

Clause 181 requires an inspector to issue a receipt, containing specified information, for any thing seized under this subdivision and to give the receipt to the person from whom the thing was seized. Subclauses 181(2) & (4) provide exceptions to the duty to provide a receipt in certain circumstances.

Clause 182 sets out the circumstances in which a seized thing will be forfeited to the State. This provision also specifies the circumstances in which and extent to which an inspector must make reasonable inquiries to locate the owner of the seized thing. It should be noted that if an inspector decides that it is necessary to retain the seized thing in order to prevent it from being used to commit an offence against this Act, the inspector must give the owner of the thing an information notice. Having regard to the operation of clause 198 (discussed below), the inspector's decision is a decision that may be appealed under part 6 of the Act.

Clause 183 allows a court, on the conviction of a person for an offence under this Act, to order the forfeiture to the State of anything used to commit the offence or anything else the subject of the offence, regardless of whether or not the thing has been seized under this subdivision.

Clause 184 enables the Executive Officer to deal with a thing which has been forfeited to the State as he or she considers appropriate, including destruction or disposal of the thing. However, the Executive Officer must not deal with the thing in a way that could prejudice the outcome of an appeal under part 6 of the Act or another appeal, relevant to the thing, under section 118 of the *District Court Act 1967*.

Clause 185 sets out when an inspector must return a thing that has been seized under this subdivision but not forfeited to the State.

Clause 186 provides for the owner of any seized thing to have access to it for inspection or, if it is a document for copying, until it is forfeited or returned.

Subdivision 5—Power to obtain information

Clause 187 is a ‘standard provision’ which gives an inspector the power to demand the name and residential address of a person whom the inspector has observed committing, or reasonably suspects to have just committed, an offence against this Act (a ‘personal details requirement’). This includes the power to require the person to produce evidence of correctness of the stated name or address, if the inspector reasonably believes the stated name or address is false. It is important to note that when making a personal details requirement, the inspector must warn the person it is an offence to fail to state his or her name or address, unless the person has a reasonable excuse.

Clause 188 makes it an offence for a person to fail to comply with a personal details requirement under clause 187, unless the person has a reasonable excuse. However, a person does not commit an offence against this provision if it is not proven that the person committed an offence against this Act.

Clause 189 gives an inspector the power to require a person to produce a document, issued to the person under this Act, or to make the document available for inspection by the inspector (a ‘document production requirement’).

Clause 190 makes it an offence for a person to fail to comply with a document production requirement under clause 189, unless the person has a reasonable excuse. Subclause 190(2) provides that it is not a reasonable excuse for an individual not to comply with a document production requirement if compliance might tend to incriminate the individual.

Clause 191 gives an inspector the power to require a person to give information, including documents, where the inspector reasonably believes that an offence against this Act has been committed and the person may be able to give information about the offence. Subclause 191(3) makes it an offence for a person to fail to comply with a requirement under this clause, unless the person has a reasonable excuse. Subclause 191(4) specifies that protection from self-incrimination is a reasonable excuse for a person to fail to comply with a requirement under this clause.

Division 4—General enforcement matters

Clause 192 is a ‘standard provision’ which requires an inspector or another person acting under the direction of an inspector, who damages something while exercising a power under this part of the Act to give notice of the damage to the appropriate person.

Clause 193 is a ‘standard provision’ enabling a person who incurs loss or expense because of the exercise or purported exercise of a power under part 5, division 3, subdivisions 1, 3 & 4 to claim compensation from the board for that loss or expense.

Clause 194 makes it an offence for a person to give information to an inspector that the person knows is false or misleading. This would cover the situation where, for example, a person made a false or misleading statement to an inspector investigating an offence allegedly committed by the person, as well as the situation where a person makes a false complaint to an inspector about a person contravening this Act.

Clause 195 makes it an offence for a person to give an inspector a document containing information the person knows is false and misleading. Subclause 195(2) specifies the circumstances under which a person does not commit an offence under this clause.

Clause 196 makes it an offence for a person to obstruct an inspector in the exercise of a power under this part of the Act, unless the person has a reasonable excuse.

Clause 197 makes it an offence for a person to impersonate an inspector.

PART 6—APPEALS

Clause 198 provides a person who is given, or who is entitled to be given, an information notice for a decision made under this Act, with a right of appeal against the decision to the District Court. For information purposes, Schedule 1 specifies the decisions that may be appealed under this clause.

It is important to note that this part of the Act is to be read in conjunction with the provisions of the *Uniform Civil Procedure Rules 1999* which deal with appeals to the District Court.

Clause 199 specifies where, how and the timeframe within which an appeal may be started.

Clause 200 specifies that in deciding an appeal, the court has the same powers as the person who made the original decision (ie the board or an inspector); is not bound by the rules of evidence and must comply with natural justice. An appeal is by way of rehearing on the material before the person who made the original decision and any further evidence allowed by the court.

Clause 201 sets out the powers of the court and details the decisions the court may make when deciding an appeal. It is important to note that if the court decides to:

- amend the original decision or substitute another decision for the original decision—the amended or substituted decision is taken to be the decision of the person who made the original decision (ie the board or the inspector concerned); or
- impose conditions on a person’s registration—the court must:
 - state the reasons for its decision
 - also decide and state the review period applying to the conditions; and
 - if the conditions imposed are ‘health conditions’, decide whether details of the conditions should be recorded in the register. The basis for the court’s decision in this regard is whether it is in the public interest for the details of the conditions to appear in the register.

Clause 202 permits the appointment of one or more assessors to assist the court in deciding an appeal which involves a question of special knowledge and skill. Although the function of an assessor is to advise the court about any questions arising during the hearing, all questions of fact or law must be decided by the court.

PART 7 —LEGAL PROCEEDINGS

Division 1—Evidence

Clause 203 clarifies that part 7, division 1 applies to a proceeding under this Act.

Clauses 204 to 206 specify those matters which do not have to be proved, or which are considered to be evidence.

Division 2 —Proceedings

Clause 207 clarifies that all offences against this Act are summary offences, except for the offence against clause 156 (which deals with the taking of a reprisal) which is an indictable offence.

Clauses 208 & 209 set out the procedures and limitations on taking proceedings for an indictable offence against this Act.

Clause 210 specifies the timeframe within which proceedings for a summary offence against this Act must start.

Clause 211 provides that, in any proceeding for an offence against this Act relating to false or misleading information or documents, for example an offence against clause 194 or 195 (discussed above) or clause 232 or 233 (discussed below), it is sufficient for the charge to state that the information or document was ‘false or misleading’.

Clause 212 specifies that where the board initiates proceedings for an offence against this Act and a penalty is imposed, the court must order the penalty to be paid to the board. Where proceedings are initiated by a person other than the board, section 43 of the *Acts Interpretation Act 1954* applies in respect of the payment of any penalty imposed by the court.

Clause 213 specifies that an action or omission by a person’s representative, in relation to an offence against this Act, is taken to have been done by the person if the representative was acting within the scope of the representative’s authority, unless the person proves that he or she could not, by the exercise of reasonable diligence, have prevented the act or omission. Subclause 213(4) defines the terms ‘representative’ and ‘state of mind’ for the purpose of this clause.

Clause 214 places an obligation on the executive officers of a corporation to ensure that the corporation complies with this Act. This provision creates an offence on the part of each executive officer in situations where the corporation has committed an offence against this Act. However, it is a defence for an executive officer to prove that he or she exercised reasonable diligence to ensure the corporation complied with this provision or was otherwise not in a position to influence the conduct of the corporation in relation to the offence. The term ‘executive officer’, for a corporation, is defined in the dictionary in Schedule 4 of the Act.

PART 8—REGISTER, RECORDS AND INFORMATION

Division 1—Register

Clause 215 requires the board to maintain a current register about registrants, which contains *at least* the information specified in subclause 215(3). There is nothing to prevent the board from recording other information about registrants, for example, details of registrants’ additional qualifications. With the exception of the information specified in subclause 215(3), the manner of keeping the register is to be determined by the board.

Consistent with the status of the register as a public document, *clause 216* requires the board to allow the public to inspect the register free of charge and, upon payment of the prescribed fee, to obtain a copy of the register or part of it. The effect of subclause 216(2) is to ensure that details of a registrant’s residential address are not publicly accessible.

Division 2—Records to be kept

For the purpose of effectively administering the legislative scheme, *clause 217* requires the board to keep records, for at least 10 years, of the details specified in subclause 217(1) about each registrant and former registrant. These details relate to the various ways in which a person’s

registration could be affected under the legislative scheme. With the exception of the information specified in subclause 217(1), the manner of keeping the records is to be determined by the board. The term ‘former registrant’ is defined in the dictionary in Schedule 4 of the Act.

Division 3—Information

Clause 218 makes it an offence for persons specified in subclause 218(1) to disclose information obtained in the course of administering this Act, unless the disclosure is expressly authorised under subclause 218(4). The information protected under this provision is information about a person’s health or information about a person’s criminal history obtained under clause 45 (discussed above).

Clause 219 specifies that where the Minister authorises the disclosure of confidential information under subclause 218(4)(i) during a financial year, the board must include a statement, containing the details specified in subclauses 219(3) & (4), in its annual report.

PART 9—MISCELLANEOUS

Division 1—Abandoned, and other, health records

Division 1 gives the board specific powers and responsibilities designed to safeguard the confidentiality of health records that have been abandoned or otherwise delivered into the board’s possession.

Clause 220 defines the terms ‘health records’ and ‘possess’ for the purpose of this division. It should be noted that the definition of ‘health records’ does not include the financial records of a dental practice.

Clause 221 sets out the board’s powers and the procedures to be followed in relation to abandoned health records. The issue of whether records have been abandoned for the purpose of this provision will depend on the circumstances of each case, having regard to the generally understood meaning of the term ‘abandoned’.

Clause 222 enables the board to exercise its powers under this division in relation to health records of a deceased practitioner, with the consent of the practitioner's personal representative.

Clause 223 sets out the board's powers and the procedures to be followed in relation to health records in the possession or control a person who is convicted of an offence against specified clauses (which deal with the taking of restricted titles, restricted specialist titles and holding out).

Clause 224 sets out the procedure to be followed in relation to health records referred to in clauses 221 or 223 which have been seized by an inspector under part 5 of the Act. The effect of subclause 224(3) is to prevent these records from being forfeited to the State or being returned to or accessed by their owner under part 5 of the Act. The powers specified under subclause 224(3) are irrelevant to these records because:

- the board has specific powers to deal with these records under clause 225 (discussed below);
- 'abandoned' records effectively have no owner—there is no one to return the records to, or who would wish to access those records;
- records referred to in clause 223 should not have been kept by the person referred to in that clause (discussed above)—on this basis, it is not appropriate to allow that person to have access to those records or for those records to be returned to that person.

Clause 225 sets out what action the board may take in relation to health records taken or delivered into its possession under this division.

Clause 226 provides that compensation is not recoverable against the board if the board destroys a health record under subparagraph 225(2)(d).

Division 2—Continuing professional education of registrants

Division 2 deals with the board's discretionary function to encourage registrants to undertake continuing professional education ('CPE'). It is important to note that, although a highly desirable activity, participation in CPE is not mandatory for registration under this Act.

Clause 227 gives the board discretion to develop or recognise a CPE program and to promote it to registrants as a ‘board endorsed’ means of keeping up to date with developments in the practice of dentistry. Having regard to the role and expertise of professional associations and educational institutions in the development and delivery of CPE programs, it is likely that the board will recognise appropriate programs developed and/or delivered by external bodies. Registrants who satisfy the requirements of a ‘board endorsed’ CPE program under this clause, are permitted to advertise the fact.

Division 3—Declared events

Division 3 provides deemed general or specialist registration under this Act to interstate registered practitioners who are engaged to provide dental or dental specialist services to persons participating in, or preparing for, declared sporting, cultural or other events in Queensland. The effect of this division is to extend the benefits and obligations of general or specialist registration under the legislative scheme to ‘visiting practitioners’. This means that a visiting practitioner has the same privileges (for example, the right to use a restricted title or to undertake a restricted practice) and the same obligations (for example, a visiting practitioner can be disciplined under the *Health Practitioners (Professional Standards) Act 1999*) as a general or specialist registrant under the legislative scheme, within the limited scope of the declared event.

It is important to distinguish the operation of this division (which provides *deemed registration* to *interstate* registered practitioners who accompany participants in declared sporting, cultural or other events in Queensland) from the operation of the *Health Practitioners (Special Events Exemption) Act 1998* (which *exempts* practitioners from *overseas*, who accompany overseas visitors participating in or preparing for declared sporting, cultural and other events in Queensland, from the registration requirements of Queensland legislation).

Clause 228 defines terms, including ‘declaration period’, ‘declared event’ and ‘visiting practitioner’, for the purpose of this division.

Clause 229 authorises the Minister to declare a ‘declared event’ by publishing a notice in the Gazette, containing the information specified in subclause 229(3), for a Queensland-based sporting, cultural or other event. It should be noted that the gazette notice is subordinate legislation.

Clause 230 provides deemed general or specialist registration to a visiting practitioner. Where conditions apply to the visiting practitioner’s interstate registration, his or her deemed registration under this Act is taken to be subject to the same conditions. The effect of this provision is that visiting practitioners are taken to be registered under part 3 of the Act (and therefore come within the definitions of ‘registrant’ and ‘general registrant’ or ‘specialist registrant’, as the case may be). It is important to note that the scope of the deemed registration provided under this clause is limited to the provision of professional services to an event participant, during the declaration period for the event.

Subclauses 230(4) & (5) clarify that a visiting practitioner with deemed general or specialist registration is not a ‘general registrant’, ‘specialist registrant’ or ‘registrant’ for the operation of the provisions specified. For example, subclause 230(4) makes it clear that a visiting practitioner can not apply for renewal of registration. It should be noted that the other divisions within part 3 (which deal with making and deciding applications for general and special purpose registration, periods of registration, registration certificates and the process of provisionally registering applicants for registration) are irrelevant to visiting practitioners with deemed general or specialist registration.

Division 4—Other provisions

Clause 231 specifies that the persons specified in subclause 231(3) who have a role in the administration of this Act are not civilly liable for an act or omission, made honestly and without negligence, under this Act. Instead, such liability attaches to the board.

Clause 232 makes it an offence for a person to give the board information, or a document containing information, that the person knows is false or misleading. This would cover the situation where, for example, a person makes a false complaint to the board about a person contravening this Act. Subclause 232(3) specifies the circumstances under which a person does not commit an offence under subclause 232(2).

Clause 233 makes it an offence for a registrant, in his or her professional capacity, to sign or provide a document that the registrant knows is false or misleading.

It should be noted that fraudulent practices relating to registration, for example, fraudulently obtaining registration; fraudulently procuring another person to be registered; falsely representing that a person applying for registration is the person mentioned in a document given to the board; or forging a registration certificate, can be dealt with as offences against the Criminal Code, for example, section 502 which deals with attempts to procure unauthorised status.

Clause 234 is to be read in conjunction with the ‘cross-application’ provisions of the Act—for example, clause 120 which applies relevant provisions from part 3, divisions 2 & 3 for the purpose of applying for special purpose registration and registering a person as a special purpose registrant under part 3, division 9. This clause complements the cross-application provisions by extending them to cover any necessary consequential modifications that need to be made to the applied provisions for them to be applied fully, including any relevant definitions. The broad nature of this provision applies, notwithstanding the specific nature of the cross-application provisions themselves.

Clause 235 provides for the board to approve forms used under the Act.

Clause 236 requires a person who sits an examination set and administered by the board under this Act, for example under subclause 46(1)(c), to first pay the prescribed fee to the board.

Clause 237 provides for the Governor-in-Council to make regulations to give effect to the Act, for example to prescribe:

- qualifications for general registration under part 3, division 2
- recency of practice requirements for renewal of general registration under part 3, division 4; and
- the range of fees provided for under the Act and arrangements for the refunding of those fees in certain circumstances.

PART 10—REPEAL, TRANSITIONAL AND SAVINGS PROVISIONS

The *Dental Act 1971* and *Dental By-law 1988* imposed restrictions on the practice of dentistry. Those restrictions were identified as potentially anti-competitive and were reviewed under National Competition Policy (NCP), which requires the review and, where necessary, reform of legislation which restricts competition. As the NCP review of those provisions was not finalised at the time this legislation was introduced into the Parliament, the restrictions on practice imposed by the *Dental Act 1971* and the *Dental By-law 1988* have been ‘saved’ under this Act and will continue to apply until this Act is amended to reflect the outcome of the NCP review.

Division 1—Repeal

Clause 238 repeals the *Dental Act 1971*.

Division 2—Transitional provisions

Division 2 makes transitional arrangements relating to the establishment of the board, the transfer of registration for existing registrants; and continuing applications and other proceedings commenced under the repealed Act.

Clause 239 defines certain terms used in part 10, division 2.

Clause 240 specifies that a reference to the *Dental Act 1971* or the former board may, if the context permits, be taken to be a reference to this Act or the board respectively.

Clause 241 provides that the board is the legal successor of the former board.

Clause 242 makes provision for the transfer of the former board’s assets, liabilities and other commitments to the board.

Clause 243 provides that the board is taken to have entered into a service agreement entered into by the former board and still in force immediately before the commencement of clause 239.

Clause 244 applies to legal proceedings, for example civil proceedings, that could have been started or continued by or against the former board. These proceedings may be started or continued by or against the board.

Clause 245 applies to a matter that had started to be or could have been dealt with by the former board under the *Health Practitioners (Professional Standards) Act 1999*, for example, the investigation of potential disciplinary action, disciplinary proceedings, immediate suspension or imposition of conditions, impairment processes or offence proceedings under that Act. The matter may be continued or started to be dealt with by the board under that Act. It should be noted that the concept of a matter 'being dealt with by the former board' includes the situation where the former board was a party to proceedings before an independent adjudicative body under that Act, as well as where the former board was the decision maker under that Act.

Clause 246 provides for the commencement or continuation of proceedings for an offence against the repealed Act, as if this Act had not commenced. Subclause 246(1) continues relevant provisions of the repealed Act and the *Medical Act and Other Acts (Administration) Act 1966* for this limited purpose. Having regard to the operation of section 7 of the *Acts Interpretation Act 1954*, this provision includes proceedings for an offence against the *Dental By-law 1988*. It should be noted the operation of this clause is effectively 'capped' by section 33 of the repealed Act which imposed a time limitation on the commencement of proceedings under that Act.

Clauses 247 & 248 continue the existing board membership and appointments of president and deputy president until the earlier of the following events:

- the day the member's term of appointment under the repealed Act would have ended if this Act had not commenced; or
- the day the member, president or deputy president (as the case may be) vacates office under this Act.

Subclause 247(2) gives the Governor-in-Council the power to appoint additional persons to be board members, ie to increase the size of the board up to a maximum of eleven members. It is intended that when this power is exercised, regard will be had to the minimum board membership

requirements specified in clauses 15—17 of this Act (discussed above). It is important to note the operation of subclause 247(5) which limits the term for which a person can be appointed under subclause 247(2).

It should be noted that these clauses operate despite the board membership requirements specified in clauses 15—18, 19(1) & (3) and 20 of this Act. This means that, to the extent to which those provisions are inconsistent with these clauses, these clauses prevail. It is important to note that the remainder of part 2 of the Act applies, for example, to enable board members to vacate office, to enable the board to conduct its business under the legislative scheme and to entitle the board members to be paid. For this purpose, subclause 247(6) ensures that a reference in part 2 of the Act to a ‘registrant member’ includes existing members and persons appointed to the board under subclause 247(2) who are registrants.

Subclause 247(7) gives the Governor-in-Council the power to appoint a person to a vacancy should it arise. It is intended that when this power is exercised, regard will be had to the minimum board membership requirements specified in clauses 15—17 of this Act, for example, the requirement for the board to comprise at least two public members. It should also be noted that subclause 19(1) can be used to fill any vacancy in the offices of chair or deputy chair.

The terms ‘existing member’ and ‘first board’ are defined in subclause 247(9). The terms ‘existing president’ and ‘existing deputy president’ are defined in subclause 248(5).

Clause 249 provides for the continuation of an appeal commenced or able to be commenced under the repealed Act, as if this Act had not commenced.

Clause 250 sets out the transitional arrangements for persons who, immediately before the commencement of clause 239, were registered under the *Dental Act 1971*. Under this clause, the person is taken to be registered:

- in the equivalent category of registration under this Act [set out in subclause 250(1)]
- with the same conditions, if any, that applied to his or her registration under the repealed Act. This includes conditions imposed on the person’s registration under the *Health Practitioners (Professional Standards) Act 1999*; and

- for a term that expires on the latest of the dates specified in subclause 250(4), unless the registration is surrendered or cancelled during this period. It should be noted that the date specified in subparagraph 250(4)(a) corresponds with the end of the annual payment period that would have applied under the repealed Act, ie the date after which the person's name would have been removed from the register under the repealed Act for failure to pay the prescribed annual licence fee. At the expiry of this term of registration, the person is required to apply for renewal of his or her general, specialist or special purpose registration under the relevant provisions of this Act.

The effect of this clause is to bring the person within the definition of 'registrant' and the relevant definition for the category or subcategory of registration in which he or she is taken to be registered ie 'general registrant', 'specialist registrant', 'provisional general registrant' or 'special purpose registrant'. In this way, the person is brought within the scope of this Act.

Clause 250 also provides for a regulation to specify that currently prescribed specialties are included in, or equivalent to a specialty which is prescribed for the purpose of this Act.

The effect of *clause 251* is to apply clause 133 (discussed above) to conditions that were imposed on the person's registration under the repealed Act and which, because of the operation of subclause 250(3), continue to apply to the person's special purpose registration under this Act. This means the board has the power to remove those conditions if it reasonably believes those conditions are no longer appropriate.

It is important to note that this clause does not apply to conditions imposed on the person's registration under the *Health Practitioners (Professional Standards) Act 1999*, as that Act applies a review period to conditions imposed under it.

It is important to note that the clause 250 (discussed above) does not provide for the continuation of the category of overseas conditional registration under subsection 18(2) of the *Dental Act 1971*. This is because there is no equivalent category of registration under this Act. Instead, *clause 252* provides that persons who, immediately before the commencement of clause 239, were registered under subsection 18(2) of the repealed Act are taken to hold general registration for the remainder of the period for which

they were granted overseas conditional registration under the repealed Act. This form of ‘deemed’ general registration can not be renewed. The board may register these practitioners as general registrants under part 3, division 2 of the Act, if before the end of the period of ‘deemed’ general registration, the board is satisfied that the person is practising the profession in Queensland.

Clause 253 applies to applications for registration that were made under the repealed Act but not decided before the commencement of clause 239. Subparagraph 253(2)(a) specifies that where there is an equivalent category of registration under this Act, the board must consider and decide the application under the relevant division of part 3 of this Act. Subparagraph 253(2)(b) deals with applications from persons who would have been eligible for overseas conditional registration under subsection 18(2) of the repealed Act. In these circumstances, the board must consider and decide the application under this Act as if it were an application for general registration. It is intended that this clause will enable the continuation under this Act of any health assessments or examinations commenced under the repealed Act in respect of such an application. It should be noted that subclause 253(4) does not limit the operation of the remainder of this Act, for example, the board is not precluded from provisionally registering the applicant under this Act.

It is important to note that the Act does not provide for the continuation of application processes started under the repealed Act, where there is no equivalent process under this Act, for example, applications for the registration of additional qualifications.

Clause 254 applies to applications for restoration of registration that were made under the repealed Act but not decided before the commencement of clause 239. Where there is an equivalent category of registration under this Act, the board must consider and decide the application under part 3, division 5 or part 3, division 5, as applied by clause 113, of this Act.

Clause 255 applies to applications for renewal of limited registration or registration for postgraduate study or research that were made under the repealed Act but not decided before the commencement of clause 239. The board must the consider and decide the application (as if it were an application for renewal of special purpose registration) under part 3, division 4, as applied by clause 127, of this Act.

Clause 256 applies to a satisfaction process in relation to a person with limited registration that was started by the former board under the repealed Act but not finished before the commencement of clause 239. The board may continue or discontinue the process as if this Act had not been passed. This is because there is no equivalent ground and satisfaction process for cancellation of the equivalent category of registration under this Act.

Clause 257 provides for the continuation of the suspension of a person's registration where there is an equivalent category of registration under this Act. This clause applies to suspensions in force at the commencement of clause 239, that were imposed under either the repealed Act (before it was amended by the *Health Practitioners (Professional Standards) Act 1999*) or under the *Health Practitioners (Professional Standards) Act 1999*. Having regard to the operation of clause 250, on the expiry of the period of suspension, the person is taken to hold the equivalent category of registration under this Act.

The effect of *clause 258* is to deem company names approved by the board under the repealed Act to have been notified to the board under clause 148 (discussed above). This clause also applies to company names that were submitted to the board for approval under the repealed Act but not approved immediately before the commencement of clause 239. Subclause 258(3) enables the board to require a corporation to which this provision applies, to provide the information mentioned in subparagraphs 148(4)(b) & (c), where the corporation did not provide this information with the list of names submitted to the board for approval under the repealed Act. It is an offence for a corporation to fail to comply with the board's requirement.

The effect of *clause 259* is to 'sunrise' the operation of clauses 148 and 151 for a period of six months from the commencement of those clauses. This will enable the board to notify the profession of its new obligations under these clauses and will give the profession sufficient time to make suitable arrangements to ensure compliance with these requirements.

Clause 260 requires the board to keep records maintained by the former board about how and why a registrant's registration was affected under the repealed Act, for at least 10 years after the commencement of clause 239.

Clause 261 ensures that if the 13 registration Bills do not commence at the same time, the definition of 'health practitioner registration Act' refers to the relevant current Act for each registered health profession until the new Act for that profession commences operation.

Division 3—Savings provisions

It is important to read this division in conjunction with clause 268 and Schedule 3 (discussed below) which together identify the provisions from the *Dental Act 1971* and the *Dental By-law 1988* that are to be saved under this Act and then renumber and relocate those provisions to this division. The ‘saved’ provisions, other than section 18 of the *Dental By-law 1988*, will physically appear in this division once the Act is reprinted after commencement.

Clause 265 provides that section 18 of the *Dental By-law 1988*, which is amended and ‘saved’ under clause 268 and Schedule 3 (discussed below) continues to have effect and is taken to be a regulation under this Act, which can be amended or repealed.

Clause 266 ensures that if this Act commences before the *Dental Technicians and Dental Prosthetists Registration Act 2001*, a reference in the saved provisions (that will be relocated to appear in this division) to that Act is taken to be a reference to the *Dental Technicians and Dental Prosthetists Act 1991*.

**PART 11—CONSEQUENTIAL AND OTHER
AMENDMENTS**

Clause 267 provides for the amendment of the Acts mentioned in Schedule 2, for example, to omit references to the *Dental Act 1971* and replace them with references to the *Dental Practitioners Registration Act 2001*.

Clause 268 provides that Schedule 3:

- amends the *Dental Act 1971* and section 18 of the *Dental By-law 1988* (only in relation to the provisions to be saved under this Act). The ‘saved’ provisions are amended to ensure that they are consistent with the drafting style of this Act (for example, to change references to ‘dentist’ to ‘registrant’ and to omit parts of the provisions which deal with matters, such as protection of title and holding out, that are already provided for elsewhere in this Act); and

- renumbers and relocates the amended ‘saved’ provisions to part 10, division 3 of the Act. As discussed above, the ‘saved’ provisions will physically appear in part 10, division 3 of the Act when it is reprinted after commencement.

SCHEDULE 1—DECISIONS FOR WHICH INFORMATION NOTICES MUST BE GIVEN

Schedule 1 lists, for information purposes, those decisions made under this Act for which information notices must be given and which, having regard to the operation of clause 198 (discussed above) are decisions which may be appealed under part 6 of the Act.

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS OF ACTS

Schedule 2 lists the Acts and the amendments made to them under clause 267 (discussed above).

SCHEDULE 3—AMENDMENT OF DENTAL ACT 1971 AND DENTAL BY-LAW 1988

Schedule 3 identifies and amends the provisions that are to be ‘saved’ from the *Dental Act 1971* and the *Dental By-law 1988* under clause 268 (discussed above).

SCHEDULE 4—DICTIONARY

Schedule 4 defines certain terms used in the Act.

ATTACHMENT

To the greatest extent possible, the 13 profession specific registration Bills adopt a uniform approach to matters common to the registered health professions, ie the Bills are based on standard provisions that have been modified to address issues specific to each profession.

The standard provisions are modified in the Bills to—

- define ‘profession’ and ‘professional service’ for each Bill—for example, the *Occupational Therapists Registration Bill 2001* defines ‘profession’ as the occupational therapy profession
- establish a separate registration board under each Bill
- define ‘restricted title’ for each profession
- repeal the current registration Act (other than the *Osteopaths Registration Bill 2001* and the *Medical Radiation Technologists Registration Bill 2001*)
- make transitional arrangements specific to each Bill—eg arrangements for the transition to the new board; the transfer of registration for currently registered practitioners; and the continuation of a range of matters (eg registration applications) commenced under the repealed Act but not completed at the commencement of the new legislation; and
- make consequential amendments to other legislation.

The attached table provides a comparative overview of the 13 Bills which indicates the extent to which each Bill deviates from the standard provisions. For ease of reference, the use of shading indicates where each Bill adopts the standard provisions in the same, or substantially the same form.

It should be noted that this table is provided for information purposes only, to assist readers of the 13 profession specific registration Bills. Readers should refer to the relevant Bill to ascertain the precise wording of provisions.

HEALTH PRACTITIONER REGISTRATION BILLS – COMPARATIVE SUMMARY OF PROVISIONS

Provisions	Chiropractors Registration Bill	Dental Practitioners Registration Bill	Dental Technicians & Dental Prosthetists Registration Bill
Professions Registered	Registers chiropractors	Registers dentists / dental specialists	Registers dental technicians & dental prosthetists
Part 1 – Preliminary (1)			
Part 2 – Registration Boards	Establishes Chiropractors Board of Qld	Establishes Dental Board of Qld	<ul style="list-style-type: none"> Establishes Dental Technicians & Dental Prosthetists Board of Qld Registrant members must include 2 dental technicians & 2 dental prosthetists
Part 3 – Registration		Provides for registration in prescribed specialties, including specific eligibility criteria & provisions dealing with relationship between general and specialist registration	<ul style="list-style-type: none"> Only a registered dental technician may apply for registration as a dental prosthetist Provisions dealing with relationship between dental technician registration and dental prosthetist registration
Part 4 – Obligations of Registrants and Other Persons	Protects restricted title of 'chiropractor'	<ul style="list-style-type: none"> Protects restricted titles of 'dentist', 'dental practitioner', 'dental surgeon', 'surgeon dentist' & prescribed specialist titles 'Holding out' offences also apply in respect of specialist registration Permits registrants to use the title 'doctor' in specified circumstances 	Protects restricted titles of 'dental technician' & 'dental prosthetist'

Dental Practitioners Registration Bill 2001

Provisions	Chiropractors Registration Bill	Dental Practitioners Registration Bill	Dental Technicians & Dental Prosthetists Registration Bill
Part 5 – Investigation & Enforcement			
Part 6 – Appeals			
Part 7 – Legal Proceedings			
Part 8 – Register, Records & Information		Register must also identify specialty in which specialist registrant is registered	Register must also identify the profession in which the registrant is registered (ie dental technician or dental prosthetist)
Part 9 – Miscellaneous		Provisions dealing with declared events also apply to visiting dental specialists	Provisions dealing with abandoned health records apply only to dental prosthetic services

Dental Practitioners Registration Bill 2001

Provisions	Chiropractors Registration Bill	Dental Practitioners Registration Bill	Dental Technicians & Dental Prosthetists Registration Bill
<p>Part 10 – Repeal & Transitional Provisions</p>	<ul style="list-style-type: none"> • Repeals <i>Chiropractors and Osteopaths Act 1979</i> • Transitional arrangements specific to this Bill – especially re: transferring current joint registration of chiropractors and osteopaths into separate registration, and appointment of first registrant members of board • Also provides for apportioning of current board's assets & liabilities between Chiropractors Board and Osteopaths Board 	<ul style="list-style-type: none"> • Repeals <i>Dental Act 1971</i> • Transitional arrangements specific to this Bill (eg transfers the registration of persons under the <i>Dental Act 1971</i> to this Act) 	<ul style="list-style-type: none"> • Repeals <i>Dental Technicians & Dental Prosthetists Act 1991</i> • Transitional arrangements specific to this Bill (eg transfers the registration of persons under the <i>Dental Technicians & Dental Prosthetists Act 1991</i> to this Act)
<p>Part 11 – Consequential Amendments</p>	<ul style="list-style-type: none"> • Consequential amendments specific to this Bill and Osteopaths Registration Bill • Also preserves current restriction on practice of chiropractic 	<ul style="list-style-type: none"> • Consequential amendments specific to this Bill • Also preserves current restrictions on practice of dentistry & use of dental auxiliaries (refer also to Part 10, Div. 3) 	<ul style="list-style-type: none"> • Consequential amendments specific to this Bill • Also preserves current restrictions on performance of dental technical work & provision of dental prosthetic services (refer also to Part 10, Div. 3)

Dental Practitioners Registration Bill 2001

Provisions	Medical Practitioners Registration Bill	Medical Radiation Technologists Registration Bill	Occupational Therapists Registration Bill
Professions Registered	Registers medical practitioners / medical specialists	Registers medical imaging technologists, nuclear medicine technologists & radiation therapists (collectively referred to as medical radiation technologists)	Registers occupational therapists
Part 1 – Preliminary			
Part 2 – Registration Boards	<ul style="list-style-type: none"> • Establishes Medical Board of Qld • Additional function of accrediting intern training programs • Board membership includes Chief Health Officer 	<ul style="list-style-type: none"> • Establishes Medical Radiation Technologists Board of Qld • Registrant members must include one person from each profession 	Establishes Occupational Therapists Board of Qld
Part 3 – Registration	<ul style="list-style-type: none"> • Current registration criteria retained (ie AMC accredited course or passed AMC exam) • Provides for registration with probationary conditions while completing internship or supervised practice (2) • Provides for registration in prescribed specialties, including specific eligibility criteria & provisions dealing with relationship between general and specialist registration • Special purpose registration largely mirrors current categories of conditional registration under <i>Medical Act 1939</i> 	<ul style="list-style-type: none"> • Registration criteria includes whether an applicant's approval, licence or certificate under the <i>Radiation Safety Act 1999</i> has been affected • Provides for registration with probationary conditions (ie under a supervised practice program) for persons who have not completed the program or without relevant practical experience (3) 	

Dental Practitioners Registration Bill 2001

Provisions	Medical Practitioners Registration Bill	Medical Radiation Technologists Registration Bill	Occupational Therapists Registration Bill
<p>Part 4 – Obligations of Registrants and Other Persons</p>	<ul style="list-style-type: none"> • Protects restricted title of ‘medical practitioner’ and prescribed specialist titles • ‘Holding out’ offences also apply in respect of specialist registration • Permits registrants to use the title ‘doctor’ • Also provides specified immunity for registrants who notify police of alleged criminal activity 	<p>Protects restricted titles of ‘medical imaging technologist’ or ‘radiographer’; ‘nuclear medicine technologist’; ‘radiation therapist’</p>	<p>Protects restricted title of ‘occupational therapist’</p>
<p>Part 5 – Intern Training Programs (Medical only)</p>	<p>Provides for accreditation of intern training programs and secondment programs</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p>Part 5 – Investigation & Enforcement</p>			
<p>Part 6 – Appeals</p>			
<p>Part 7 – Legal Proceedings</p>			

Dental Practitioners Registration Bill 2001

Provisions	Medical Practitioners Registration Bill	Medical Radiation Technologists Registration Bill	Occupational Therapists Registration Bill
Part 8 – Register, Records & Information	Register must also identify speciality in which specialist registrant is registered	Register must also identify the profession in which the registrant is registered (ie medical imaging technology, nuclear medicine technology or radiation therapy)	
Part 9 – Miscellaneous	<ul style="list-style-type: none"> • Provisions dealing with declared events also apply to visiting medical specialists • Also provides for deemed registration for practitioners in emergencies, patient transport & for transplantation • Also provides specified immunity for persons supervising registrants under internship or supervised practice arrangements 	<ul style="list-style-type: none"> • Provides specified immunity for persons supervising probationary registrants • Additional regulation-making power in respect of supervised practice programs (supervisors and professional practice settings) 	
Part 10 – Repeal & Transitional Provisions	<ul style="list-style-type: none"> • Repeals <i>Medical Act 1939</i> • Transitional arrangements specific to this Bill (eg transfers the registration of persons under the <i>Medical Act 1939</i> to this Act) 	<ul style="list-style-type: none"> • Provides for establishment of new board • Transitional arrangements specific to this Bill (eg provides for registration of MRTs who meet specified criteria) 	<ul style="list-style-type: none"> • Repeals <i>Occupational Therapists Act 1979</i> • Transitional arrangements specific to this Bill (eg transfers the registration of persons under the <i>Occupational Therapists Act 1979</i> to this Act)
Part 11 – Consequential Amendments	Consequential amendments specific to this Bill	Consequential amendments specific to this Bill	Consequential amendments specific to this Bill

Dental Practitioners Registration Bill 2001

Provisions	Optometrists Registration Bill	Osteopaths Registration Bill	Pharmacists Registration Bill
Professions Registered	Registers optometrists	Registers osteopaths	Registers pharmacists
Part 1 – Preliminary			
Part 2 – Registration Boards	Establishes Optometrists Board of Qld	Establishes Osteopaths Board of Qld	Establishes Pharmacists Board of Qld
Part 3 – Registration			Two additional registration criteria, ie completion of prescribed training & supervised practice
Part 4 – Obligations of Registrants and Others	Protects restricted title of ‘optometrist’ and ‘optician’	Protects restricted title of ‘osteopath’	<ul style="list-style-type: none"> • Protects restricted titles of ‘pharmacist’, ‘pharmaceutical chemist’ and ‘chemist’ • Additional requirement for pharmacy to be under personal supervision of pharmacist in specified circumstances
Part 5 – Investigation & Enforcement			
Part 6 – Appeals			
Part 7 – Legal Proceedings			
Part 8 – Register, Records and Information			

Dental Practitioners Registration Bill 2001

Provisions	Optometrists Registration Bill	Osteopaths Registration Bill	Pharmacists Registration Bill
Part 9 – Miscellaneous			
Part 10 – Repeal and Transitional Provisions	<ul style="list-style-type: none"> • Repeals <i>Optometrists Act 1974</i> • Transitional arrangements specific to this Bill (eg transfers the registration of persons under the <i>Optometrists Act 1974</i> to this Act) 	<ul style="list-style-type: none"> • Transitional arrangements specific to this Bill – especially re: transferring current joint registration of chiropractors and osteopaths into separate registration, and appointment of first registrant members of board 	<ul style="list-style-type: none"> • Repeals <i>Pharmacy Act 1976</i> • Transitional arrangements specific to this Bill (eg transfers the registration of persons under the <i>Pharmacy Act 1976</i> to this Act)
Part 11 – Consequential Amendments	<ul style="list-style-type: none"> • Consequential amendments specific to this Bill • Also preserves current restrictions on practice of optometry 	<ul style="list-style-type: none"> • Not applicable (made under Chiropractors Registration Bill) 	<ul style="list-style-type: none"> • Consequential amendments specific to this Bill • Also preserves current restrictions on practice of pharmacy and pharmacy ownership (refer also to Part 10, Div. 3)

Dental Practitioners Registration Bill 2001

Provisions	Physiotherapists Registration Bill	Podiatrists Registration Bill	Psychologists Registration Bill	Speech Pathologists Registration Bill
Professions Registered	Registers physiotherapists	Registers podiatrists	Registers psychologists	Registers speech pathologists
Part 1 – Preliminary				
Part 2 – Registration Boards	Establishes Physiotherapists Board of Qld	Establishes Podiatrists Board of Qld	Establishes Psychologists Board of Qld	Establishes Speech Pathologists Board of Qld
Part 3 – Registration			<ul style="list-style-type: none"> • ‘Approved qualifications’ may be determined by board or prescribed by regulation • Provides for registration with probationary conditions (ie under a supervised practice program) for persons who have not completed the program or without relevant practical experience (4) 	
Part 4 – Obligations of Registrants and Others	Protects restricted title of ‘physiotherapist’ and ‘physical therapist’	Protects restricted title of ‘podiatrist’ and ‘chiropracist’	Protects restricted title of ‘psychologist’	Protects restricted titles of ‘speech pathologist’, ‘speech therapist’ & ‘speech language pathologist’
Part 5 – Investigation & Enforcement				

Dental Practitioners Registration Bill 2001

Provisions	Physiotherapists Registration Bill	Podiatrists Registration Bill	Psychologists Registration Bill	Speech Pathologists Registration Bill
Part 6 – Appeals				
Part 7 – Legal Proceedings				
Part 8 – Register, Records and Information				
Part 9 – Miscellaneous			<ul style="list-style-type: none"> Provides specified immunity for persons supervising probationary registrants Additional regulation-making power in respect of supervised practice program (supervisors and professional practice settings) 	
Part 10 – Repeal and Transitional Provisions	<ul style="list-style-type: none"> Repeals <i>Physiotherapists Act 1964</i> Transitional arrangements specific to this Bill (eg transfers the registration of persons under the <i>Physiotherapists Act 1964</i> to this Act) 	<ul style="list-style-type: none"> Repeals <i>Podiatrists Act 1969</i> Transitional arrangements specific to this Bill (eg transfers the registration of persons under the <i>Podiatrists Act 1969</i> to this Act) 	<ul style="list-style-type: none"> Repeals <i>Psychologists Act 1977</i> Transitional arrangements specific to this Bill (eg transfers the registration of persons under the <i>Psychologists Act 1977</i> to this Act) 	<ul style="list-style-type: none"> Repeals <i>Speech Pathologists Act 1979</i> Transitional arrangements specific to this Bill (eg transfers the registration of persons under the <i>Speech Pathologists Act 1979</i> to this Act)

Dental Practitioners Registration Bill 2001

Provisions	Physiotherapists Registration Bill	Podiatrists Registration Bill	Psychologists Registration Bill	Speech Pathologists Registration Bill
Part 11 – Consequential Amendments	<ul style="list-style-type: none"> • Consequential amendments specific to this Bill • Also preserves current restrictions on practice of physiotherapy 	<ul style="list-style-type: none"> • Consequential amendments specific to this Bill • Also preserves current restrictions on practice of podiatry 	Consequential amendments specific to this Bill	Consequential amendments specific to this Bill

- (1) Note – for the *Medical Practitioners Registration Bill 2001* the following variations to the numbering of Parts apply – Part 6 (Investigation and Enforcement); Part 7 (Appeals); Part 8 (Legal Proceedings); Part 9 (Register, Records & Information); Part 10 (Miscellaneous); Part 11 (Repeal & Transitional Provisions); Part 12 (Consequential & Other Amendments)
- (2) Includes capacity to provisionally register certain probationary registrants; additional grounds for cancelling registration; and separate review process for probationary conditions
- (3) Includes power to prescribe supervised practice program; capacity to provisionally register certain probationary registrants; additional grounds for cancelling registration; and separate review process for probationary conditions
- (4) Includes power to prescribe supervised practice program and supervised practice plans; capacity to provisionally register certain probationary registrants; additional grounds for cancelling registration; and separate review process for probationary conditions

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