

COMPETITION POLICY REVIEW TEAM

DEPARTMENT OF HUMAN SERVICES

NATIONAL COMPETITION POLICY

LEGISLATION REVIEW

DENTISTS ACT 1984

REPORT OF THE REVIEW PANEL

February 1999

The views expressed in this report are the views of the Review Panel and do not represent the views of the South Australian Government. Any action taken in anticipation of the outcomes of the review process is at the risk of persons taking such action.



TABLE OF CONTENTS

INTRODUCTION	1
CONSULTATION	2
1. CENTRAL ISSUES	3
1.1 Purpose of Act.....	3
1.2 Markets.....	3
1.3 Restrictions	7
1.4 Costs.....	7
1.5 Public Benefits	8
1.6 Other States and Territories	8
2. ANALYSIS OF RESTRICTIONS	11
2.1 Registration Requirements	11
2.1.1 Criteria for Registration	11
2.1.2 Limited Registration	15
2.1.3 Reinstatement of Person On Register	16
2.1.4 Fees	17
2.1.5 Restriction of Movement Between Jurisdictions	18
2.2 Practice Protection	19
2.2.1 Scope of Practice	19
2.2.2 Reservation of Title	27
2.2.3 Other Practice Protection Provisions	29
2.3 Ownership and Business Controls	30
2.3.1 Registration of Companies	30
2.3.2 Restrictions on Employing Registered Persons	32
2.3.3 Restrictions on Corporate Names	33
2.4 Disciplinary Actions.....	33
2.5 Regulatory Bodies	36
2.5.1 The Dental Board.....	36
2.5.2 The Dental Professional Conduct Tribunal	39

TABLE OF CONTENTS CONT'D

2.5.3 The Clinical Dental Technicians Registration Committee	40
2.5.4 Legislative Safeguards	41
3. ADMINISTRATIVE REQUIREMENTS.....	45
4. CONCLUSION.....	47
4.1 Conclusions.....	47
4.2 Recommendations.....	48
5. APPENDICES	53
Appendix 1: Terms of Reference	53
Appendix 2: SA Dentistry and its Workforce – Comparison of Roles and Scope of Practice.....	55
Appendix 3: Summary of Victorian Recommendations	58
Appendix 4: Comparison of Fees.....	60
Appendix 5: Public Health Risks of Dentistry.....	61
Appendix 6: Material Considered by Review Panel	62
Appendix 7: Consultation List	63

INTRODUCTION

The following report concerns the review of the *Dentists Act 1984*. The review is conducted in compliance with an obligation upon the South Australian Government under clause 5 of the Competition Principles Agreement. The Competition Principles Agreement is one of three agreements signed by the Commonwealth, State and Territory Governments in April 1995. These three agreements give effect to the National Competition Policy.

The obligation contained in clause 5 of the Competition Principles Agreement concerns the review, and where appropriate reform, of legislation which restricts competition. The guiding principle in undertaking this review is that the *Dentists Act* should not restrict competition unless:

(a) the benefits of the restriction to the community as a whole outweigh the costs;

and

(b) the objectives of the legislation can only be achieved by restricting competition.

The Terms of Reference for this review reflect the requirements of the Competition Principles Agreement. In addition, the Review Panel has considered whether administrative procedures required by the *Dentists Act* are unnecessary or impose an unwarranted burden on any person. To satisfy the requirements of clause 5 of the Competition Principles Agreement the following documents have been reviewed:

Dentists Act 1984
Dentists Regulations 1988

This report has been drafted by the Review Panel pursuant to the Terms of Reference, which are detailed in Appendix 1.

The report is in five parts. The first part concerns the central issues of the review. The second part details the analysis of specific provisions of the Act and regulations. The third part examines the administrative burdens imposed by the requirements of the Act. The fourth part lists the conclusions and recommendations of the Review Panel. Finally, Part 5 of the report contains various appendices.

References to “the Act” are references to the *Dentists Act 1984* and references to specific sections are references to sections of the Act unless indicated otherwise. References to “the regulations” are references to the *Dentists Regulations 1988* and references to specific regulations are references to regulations contained in the regulations unless otherwise indicated.

CONSULTATION

This review was preceded by an issues paper which introduced the concepts of Competition Policy, and put forward a preliminary analysis of the Act from that perspective. Submissions were invited from consumers, government bodies, dental care providers, professional bodies, other health care professionals and all other parties interested in Competition Policy issues. An advertisement was placed in 'the Advertiser', copies of the issues paper were forwarded to organisations believed to have an interest in the matters raised, and a number were sent out on request. The Review Panel accepted verbal or written submissions, by telephone, fax, postage and e-mail. The closing date for submissions on the issues paper, after a consultation period of approximately four weeks, was 2nd November 1998

A second consultation period, this time of two weeks, occurred in relation to the draft report. Where an undated submission is referred to in this report, the submission is the first submission, ie in relation to the issues paper.

Appendix 7 contains the consultation list and Appendix 6 contains a list of submissions received by the Review Panel.

PART 1: CENTRAL ISSUES

1.1 Purpose of Act

The objects section of the Act states that the *Dentists Act* is an “Act to provide for the registration of dentists, clinical dental technicians and dental hygienists; to regulate the practice of dentistry for the purpose of maintaining high standards of competence and conduct by persons registered under this Act; to repeal the *Dentists Act* 1931; and for other purposes.” The Act establishes the Dental Board of South Australia, The Clinical Dental Technicians Registration Committee and The Dental Professional Conduct Tribunal to achieve these objectives, and empowers them to administer the provisions of the Act. The overriding purpose of the Act is to protect the public by ensuring dental care is of a high standard, and is provided by persons who are identifiable within the community as possessing the necessary qualifications and/or experience to provide dental services. However this public protection purpose is not expressly stated in the Act.

Submissions were sought on whether the Act should state in its objectives that its purpose is to protect the public. Most submissions agreed that it should, although differed as to the exact wording.

Submissions were not sought on the name of the Act. However one submission¹ suggested that the name be changed to reflect the scope of practitioners regulated. The Review Panel agrees.

Recommendations

1. The objects section of the Act should be amended to state “An Act to protect the public by providing for the registration of dentists,.....”.
2. The name of the Act should be changed to the “Dental Act”.

1.2 Markets

The purpose of legislation review is to analyse the effect of legislative restrictions upon competition in markets. The identification of the relevant markets is imperative, therefore, for an accurate assessment of the impact of legislative restrictions upon competition. Competition within markets is competition in the broad sense of the ability to enter and participate in a market, not in the sense of individual rights to participate in a market. Competition policy, therefore, is not concerned with marginal behaviour, but concerned with broader competitive outcomes. The potential impact of legislated restrictions upon an individual’s participation in a market, therefore, is only relevant to legislation review where the impact on the individual is symptomatic of broader anti-competitive outcomes caused by the legislated restriction. This distinction is important in the context of reviewing legislation which empowers a body to take disciplinary action against individuals in a profession. The ability to restrict or prevent an individual’s participation in a profession is only relevant to legislation review if criteria for imposing such restrictions generally distorts competitive

¹ The Dental Board of South Australia submission

conduct in a market.

Dental services

The provision of dental services is undertaken by six groups of people, dental specialists, general dentists, clinical dental technicians, dental hygienists, dental technicians and dental therapists. Dental assistants are also involved in the provision of dental services but are not considered as a group relevant to this review. One submission² pointed out that students are also an important provider of dental services. However students do not provide dental treatment for fee or reward and therefore are not considered providers for the purposes of this review.

Specialists

Dental specialists are regulated by the *Dentists Act* and are subject to the system of registration established by the Act. Specialists are trained as general practitioners in dentistry but have additional qualifications and experience. They may only practise in their particular area of specialty. Specialists are employed by government clinics or run their own practices.

General Practitioners

General practitioners in dentistry are also subject to the *Dentists Act* including the system of registration. General practitioners may practise in any area of dentistry, as long as they do not hold themselves out to be a specialist in any area. General practitioners have similar types of employment opportunities as specialists, but also practise in partnerships and incorporated practices or are employed by such practices. There are approximately 880 dentists (general and specialist) registered in South Australia. The term “dentist” in this report refers to both general and specialist dentists.

Clinical Dental Technicians

Clinical dental technicians must be registered under the Act. Their work involves the making and fitting of full dentures and other appliances. Clinical dental technicians may also be known as dental prosthetists. They have similar employment opportunities as dental technicians. There are 38 clinical dental technicians registered in South Australia.

Dental Technicians

Dental technicians are not regulated by the Act, other than they (as unregistered persons) may not practise in certain areas of dentistry reserved by the Act to registered dental care providers. Dental technicians may have trained by an apprenticeship or, more recently, may possess a certificate or diploma in dental technology. Their work involves the making of dentures and other appliances. They may not take fittings, but may have some contact with the consumer, for example to take shades and explain procedures. Dental technicians are employed in private dental practices, commercial laboratories, hospital clinics and the Defence Force or may operate their own practices. It is estimated that there are approximately 250 dental technicians practising in South Australia³.

² South Australian Dental Service submission

³ Submission by Neil Sullivan at 2

Dental Hygienists

Dental hygienists are also subject to a system of registration under the Act. Their scope of practice is clearly defined by the Act including a supervision requirement. Essentially, their work involves preventative dental care including educating the consumer. They may perform procedures which carry some risk, such as taking x-rays and removing sutures. Dental hygienists are mainly employed in private dental practices or government dental clinics. There are approximately 150 dental hygienists registered in South Australia.

Dental Therapists

Dental therapists are not registered, but the Act authorises them to be employed by the South Australian Dental Service Incorporated (only) to provide dental treatment to children. The majority of the practice of a dental therapist involves restorative treatment, and may include invasive or irreversible procedures. Dental therapists are subject to the “control” of a dentist. There are approximately 150 dental therapists in South Australia.

A summary of the comparative duties and scopes of practice of dental care providers is contained in Appendix 2. References to “dentists”, “clinical dental technicians” and “dental hygienists” in this Report are references to persons registered under the Act as dentists, clinical dental technicians and dental hygienists respectively. These groups are cumulatively referred to a “registered persons”.

The six groups may compete with each other on an individual basis where it is open to an employer to employ a person from either one group or another.

However, except for dentists and clinical dental technicians, these groups do not market their services on an individual basis. Many of the submissions received emphasised the fact that the members of the dental profession work as a team in the provision of dental services⁴. Therefore, the competition relevant to this review is the competition between the employers, that is dental practices which are mainly owned and operated by dentists . Any restrictions on an individual, on conduct within or entry to a market, may give rise to additional costs to the employer and hence be passed on as costs to the public.

The extent, if any, to which restrictions contained in the *Dentists Act* restrict competition between these dental practices is, therefore, relevant to this review. The decision by dental practices to employ a particular category of dental care provider rather than another category is governed by many factors, including industrial agreements⁵, funding arrangements for publicly funded clinics, risk assessment by the dental practices and consumer expectations. While the Act demarcates members of the dental profession and registered and non-registered dental care providers on the basis of qualification, it does not restrict the employment decisions of dental practices (except for the restrictions on dental therapists). The key consideration for employers is whether they can meet their general duty of care to their patients. This is not a legislative restriction upon competition.

⁴ for example, Australian Dental Association (SA Branch) submission at 12

⁵ for example, SA Dental Service submission states at 3 that industrial restrictions limit the ability of the public sector to compete with the private sector

There is also competition between clinical dental technicians either in practice with other clinical dental technicians or in sole practice. There may also be some competition between dental practices and clinical dental technician practices. In determining what is the relevant market, the ability to substitute the service should be considered. Competition between a dentist and a clinical dental technician, for example, may occur when a consumer requires a full denture made or fitted. However such competition does not occur if a consumer requires dental treatment that only the dentist may provide. In other words, substitution does not always occur “both ways”. Therefore the two practices do not always compete. However in the specific case of the market for the provision of full dentures, competition between the two practices is relevant. Therefore competition in the broader market of all dental services is considered.

The market is a local market, as consumers will only travel a limited distance to obtain dental treatment. Consumers will then choose between the substitutable services offered by the different dental practices in their local area, based on differences such as cost, perceived competence and other factors.

The market for dental services has changed since the introduction of the Act in 1984. There is greater substitutability of services now than in 1984. The roles and scopes of practice of clinical dental technicians, dental hygienists and dental therapists are continually expanding over time. Changes such as the “introduction of fluoridated water supplies in 1971, the widespread use of fluoride tooth past and the greater public awareness of good dental health”⁶ have reduced the incidence of dental disease in children. However, with an increasing ageing population the demand for dental services to the aged is increasing. In addition, technological advances make dental care more accessible and cost effective.

Training Market

A requirement of registration is that the applicant has prescribed qualifications. One function of the Board is to make the necessary inquiries in relation to qualifications and thereby make recommendations to the Minister in relation to regulations prescribing qualifications and other requirements for registration (sub-sections 12(2)(a) & (b)). The market for providing dental training, therefore, may be affected by decisions of the Board, and, therefore, is also a market relevant to the review of the *Dentists Act*.

⁶ Australian Dental Association (SA Branch) submission at 14

1.3 Restrictions

Restrictions upon competition are of three types:

- (a) barriers to entering (or re-entering) markets;
- (b) restrictions on competition within markets; and
- (c) discrimination between market participants.

Each of the restrictions identified in the course of this review has been identified in terms of these theoretical types of restrictions. Such categorisation is useful for determining the impact of the restriction upon competition in the relevant market. For the purposes of this review restrictive provisions have been assessed as trivial, intermediate or serious. There is no definitive means of identifying the correct weight to be ascribed to restrictions. The following, however, is the “rule of thumb” utilised during the course of this review. A trivial restriction upon competition has only a minimal effect upon competition within a market. There is no clear-cut delineation between intermediate and serious restrictions upon competition. Generally, however, an intermediate restriction upon competition is a restriction which imposes a substantial cost upon competition. In this context “substantial” indicates other than a minimal effect upon competition. By comparison, a serious restriction is a restriction which prohibits entry or re-entry into a market, or prohibits certain conduct within a market.

1.4 Costs

Two categories of cost arise from the restrictions contained in the *Dentists Act*. Firstly, the restrictions upon registration and re-entry to the profession causes the supply of dental care providers to be less than the demand therefor. In this context, restrictions upon conducting education and training also contribute to a shortage of persons attaining sufficient qualifications to enable them to be registered.

Restricting numbers of dental care providers causes the cost of dental services to rise. This therefore, is a cost upon the community. Similarly, a short-fall in the numbers of dental care providers will reduce the efficiency and effectiveness of available dental services. The numbers of dental care providers practising is the result of many factors which are discussed below.

The second category of cost is compliance costs. These are the costs of registration and of complying with standards of competency and professional conduct. These costs impact upon competition if they are sufficient to dissuade participation in the market for dental services, or are substantial and passed on to consumers as an element of the price charged for dental services. One submission⁷ pointed out that compliance costs are “a minor component (of a dental practice’s overheads, which generally include a high capital expenditure due to the need for expensive equipment) and their reduction or removal would have little impact on the cost of dental services”

⁷ Australian Dental Association (SA Branch) submission at 15

1.5 Public Benefits

The professional regime established under the *Dentists Act* achieves significant public benefits. Restrictions upon entry to, and participation in the dental profession ensure that persons claiming to be registered possess the requisite qualifications and experience to fulfil those roles. The provision of professional services is often done in an environment of “information asymmetry” between providers and consumers. Consumers will often judge a professional’s ability to provide a professional service on the basis of their manner and presentation. The consumer will often lack the knowledge to assess the quality of the service being provided or the knowledge or expertise of the professional.⁸ In such an environment, Government has a legitimate role in ensuring that professionals meet minimum standards of competency. The public can be confident that a person holding themselves out to possess certain qualifications and expertise does in fact hold this level of qualifications and expertise.

The provision of information to consumers is, therefore, a significant factor in promoting competition. Deregulation of professions, without a concomitant increase in the knowledge of consumers, to enable them to make informed choices regarding service providers, will expose consumers to risks of harm without providing them with the means of avoiding this harm. Systems of registration provide a mechanism for providing a public record of the practitioner within a profession and any restrictions upon their ability to practise. The compilation of such information and its provision to consumers is a significant public benefit.

Restrictions upon conduct within a profession also preserve public confidence in the standards of professional care provided by members of the dental profession. For example, the requirement that professionals only operate within their area of professional competence. A broad notion of competency has been adopted by the Review Panel in undertaking this review. A broad notion includes not only criteria such as educational qualifications and practical experience but also includes issues of capacity to practise within the field competently. Requirements of capacity to practise within a field will vary between the professions. In some professions, such as dentistry, capacity will include physical and mental capacity to carry out activities within the area of practice. Capacity will also include the ability to undertake functions within the area of competency which respects the duty of care and fiduciary duty to consumers.

1.6 Other States & Territories

The practice of dentistry is subject to legislative regulation in all other States and Territories of Australia. This legislation is similarly the subject of review under the Competition Principles Agreement. As at the date of this report only Victoria has formulated recommendations as to amendments to legislation, and no amendments have yet been made as a result of this review. However, it is useful to consider the position in each of these States and Territories.

⁸ John Webster “Competition Policy and the Professions - The Issues” in the Australian Council of Professions *National Competition Policy and the Professions* at 5

Victoria

Currently the Victorian dental profession is regulated by two pieces of legislation⁹ which provide for the registration of dentists (general and specialist) and the licensing of advanced dental technicians, dental technicians and dental auxiliaries. The Acts confer title and practice protection (except that auxiliaries are not subject to specific title protection) and contain restrictions on the conduct of registered/licensed persons and on the ownership of dental practices, similar to the South Australian position, and advertising. There is provision for dental therapists as in South Australia.

As a consequence of the review pursuant to the Competition Principles Agreement, the Victorian Department of Human Services has produced a report containing recommendations for change¹⁰. Most importantly, it was recommended that there be only one Act, called the *Dental Practice Act*, which would establish a system of registration for dentists, dental specialists, dental prosthetists (currently advanced dental technicians) and dental auxiliaries. Title and practice protection should be retained, with a proviso that the definition of “dentistry” be amended to be more specific¹¹. The Victorian report recommended that all restrictions on ownership of dental practices or laboratories be removed, with the addition of an offence for “an employer person to unduly influence an employee to perform dentistry in a manner detrimental to the welfare of the consumer”. Further, all advertising restrictions were recommended to be removed and replaced with a broad prohibition on “false, misleading and deceptive advertising”. The full list of the Victorian recommendations is reproduced in Appendix 3.

New South Wales

New South Wales also has two pieces of legislation¹², which provide for the registration of dentists, dental prosthetists and dental technicians. There is provision to license persons who practice dentistry under the supervision of a dentist in certain circumstances, as well as provision for persons who practise dentistry under similar circumstances as those of dental therapists in South Australia. Hygienists are not required to be licensed or registered, but are limited in their scope of practice. There are similar restrictions on the conduct of registered persons, ownership of dental practices and other activities as in South Australia.

⁹ *Dentists Act 1972; Dental Technicians Act 1972*

¹⁰ Victorian Department of Human Services *Review of Dentists Act 1972 and Dental Technicians Act 1972, Final Report*, (July 1998)

¹¹ ie to include “the diagnosis and management of conditions of the mouth and/or the performance of any invasive and/or irreversible procedure upon the natural teeth and/or associate parts for a person, and the construction and/or intraoral adjustment of artificial teeth or appliances for a person” (page 17)

¹² *Dentists Act 1989; Dental Technicians Registration Act 1988*

Queensland

The position in Queensland is similar again, with two pieces of legislation¹³ regulating the profession. Dentists, specialists, operative dental auxiliaries, dental technicians and dental prosthetists are all required to be registered in order to practise dentistry and use their respective titles. The main difference to the South Australian model is that there are no restrictions on the ownership of dental practices/companies except that the name must be approved by the Board.

Tasmania

Tasmania also has two Acts¹⁴, with similar restrictions to South Australia. There is provision for registration of dentists, dental auxiliaries and dental prosthetists. There are no ownership restrictions in the Tasmanian model.

Western Australia

Western Australia has a similar system to South Australia, although being regulated by two pieces of legislation¹⁵. The most apparent difference is in the classes of registrants, namely dentists, therapists, hygienists, school dental therapists and dental prosthetists (licensed). The school dental therapist is the equivalent of the dental therapist in South Australia.

Australian Capital Territory

At present the situation in Australian Capital Territory is two Acts¹⁶ establishing a system of registration for dentists, specialists, hygienists, dental technicians and dental prosthetists with similar restrictions on title, practice and professional conduct to South Australia. However there are no ownership restrictions.

Northern Territory

Northern Territory, like South Australia, only has one Act to regulate the dental profession and most of the controls therein are comparable to the South Australian Act. However, the Act does not require the registration or licensing of dental technicians or dental prosthetists.

¹³ *Dentists Act 1971; Dental Technicians and Dental Prosthetists Act 1991*

¹⁴ *Dental Act 1982; Dental Prosthetists Registration Act 1990*

¹⁵ *Dental Act 1939; Dental Prosthetists Act 1985*

¹⁶ *Dentists Act 1931; Dental Technicians and Dental Prosthetists Registration Act 1988*

PART 2: ANALYSIS OF RESTRICTIONS

2.1 Registration Requirements

The registration requirements of the Act do not, of themselves, create a restriction on competition. However, these provisions form the basis of the practice protection regime established by the Act. The provisions which achieve practice protection, such as the reservation of title and practice provisions¹⁷, generally relate to the provision of dental treatment by unregistered persons. Practice protection therefore relates to qualifications and other requirements needed to enter the profession.

2.1.1 Criteria for Registration

The registration criteria of sections 39 to 42 form part of the regime of practice protection. A person may apply to be registered as a dentist, on the general or specialist register, as a clinical dental technician or as a dental hygienist. An applicant shall be registered under the *Dentists Act* where that person meets the criteria for registration. Pursuant to sections 39 to 42 the relevant criteria are:

- (a) has prescribed qualifications and experience;
- (b) fulfils all other prescribed requirements; and
- (c) is a fit and proper person to be registered on the specialist register or the general register or as a clinical dental technician or dental hygienist.

Qualifications and Experience

Criteria for registration based upon objective standards of competence, while being restrictions upon entering a profession, may be justifiable in terms of protecting the public where there is a risk of harm to the public from persons who are not competent to provide certain services. A threshold of risk which will justify registration requirements across all professions cannot be quantified as the risks associated with “holding out” in different professions cannot be compared in this manner. The public benefits of registration must be weighed against the costs of registration peculiar to that profession. In relation to the services provided by dental care providers, this degree of risk is significant¹⁸. Dentistry is an invasive and exposure prone service, in which the risk of cross-infection may be high. In addition many dental procedures are irreversible. Therefore persons holding themselves out as registered dental care providers should be competent in the delivery of dental services. Attaining a qualification which, in the opinion of the Board, is necessary to ensure competency is an objective criteria for attaining registration.

The qualifications (and prescribed experience in the case of dental specialists) for all registered persons are set out in the regulations.

¹⁷ sections 35 - 38 - see discussion in part 2.2

¹⁸ see discussion on reservation of practice in part 2.2.1

The Second Schedule to the regulations provides the prescribed qualifications for registration on the general register. These relate to the completion of listed courses or a certificate that the applicant has satisfactorily completed examinations conducted by the Australian Dental Council (and, previously, by the Australian Dental Examining Council) or any qualifications recognised by the Board as being of equivalent standard. The qualifications and experience required for registration on the specialist register are listed in the Third Schedule to the regulations and are the same qualifications as are required for the general register plus post graduate qualifications and experience in general dentistry and in the relevant area of specialty.

Regulations 10 and 11 prescribe the qualifications required for registration as a clinical dental technician and dental hygienist. The required qualifications relate to completion of courses approved by the Board or completion of examinations conducted by the Dental Board (clinical dental technicians and dental hygienists) or a Certificate or Associate Diploma in Dental Hygiene from the South Australian Department of Technical and Further Education (dental hygienists).

The requirement for the completion of a course is a restriction on competition, the costs of which may be justified if the content of the course is necessary for the applicant to attain the competency required to practise in the relevant field of dentistry.

The number of people who may attain the necessary qualifications is limited by the numbers of places in the relevant courses. The numbers of places in a teaching institution is dependant upon funding to those institutions. Other restrictions upon the numbers of dental care providers include the availability of clinical practice placements (where required for the relevant course), educational standards required to attend the teaching institution and the cost of attending such courses. The requirement for the completion of a course is a serious restriction on competition.

Similarly examinations are an intermediate form of restriction on the entry of a person to the dental profession. The costs associated with the satisfactory completion of an examination may be justified if the examination amounts to a demonstration of competency.

There is currently no examination conducted by the Board and no courses approved by the Board in relation to the registration of clinical dental technicians, so in order to be registered in South Australia as such the general practice is to register interstate and apply for registration in South Australia under Mutual Recognition (see below).

There is public benefit in the Board, being a body with specific knowledge of the dental profession, being involved in the process of prescribing the qualifications required for registration. The Board is in a position to evaluate which training courses would sufficiently qualify a person to be competent in a given area of dentistry. The provisions for an equivalent standard or an approved course allows for discretion on the part of the Board in situations of new course or overseas and interstate courses (in addition to mutual recognition). In addition, the applicant for registration has a right of appeal against the refusal by the Board to register on the basis of qualifications.

Restricting the number of dental care providers practising only leads to anti-competitive costs where the demand therefor exceeds the supply, as in rural areas, thereby causing an increase in the cost of dental services. The only way to minimise this cost would be to lower the standard of competence required¹⁹.

There are also compliance costs of obtaining the necessary qualifications, including tuition fees and lost income.

Submissions were sought on whether the system of registration, where based upon objective standards of competence, significantly restricts the numbers of dental care providers practising and if so, whether the restriction is justified in terms of public benefit. Most of the submissions received agreed that the system of registration is necessary to protect the public interest. The Review Panel considers the qualifications required for registration to be necessary to ensure dental care providers are competent in the provision of dental services.

There are no viable alternatives to prescribing qualifications (and experience) or requiring the successful completion of an examination in order to practise dentistry, which adequately meet the objective of establishing the competency of a potential dental care provider, within the current regime of practice protection. A possible alternative to prescribing qualifications and all other requirements for registration could be a model where there are no requirements to register, other than the completion of a form and the payment of an administration fee. The Board, or other body, would then have power to deregister in the case of incompetence, unprofessional conduct etc. However, this would not sufficiently protect the public by minimising the risk of irreversible harm. Other alternatives are discussed in part 2.2.1 in relation to reservation of practice.

The Review Panel concludes that there are no alternatives which adequately protect the public.

Training Market

The requirement that dental care providers have prescribed qualifications is a barrier to entry to the market for dental training courses. This is an intermediate restriction on competition in the training market.

The public benefits and costs arising from this restriction are the same as those discussed above. However, in this instance, there is no appeal process available to a potential training provider where the Board decides not to approve or recognise a course that is not listed in the regulations. Therefore the Board's power to make restrictive decisions which affect the market for training providers is not subject to scrutiny. The Review Panel believes that there should be such a process.

Submissions were sought as to whether entry to or conduct within the training market is unjustifiably restricted. There were no submissions which specifically addressed this issue. The Panel is not aware of any prospective training provider being refused as a

¹⁹ see discussion on Functions of the Board in part 2.5.1

prescribed, approved or recognised course. The Review Panel has considered the matter and concluded that the public benefit outweighs the costs of the restrictions in the training market, subject to the recommendation of the Panel. The alternatives to the current system are discussed in relation to qualifications and experience above.

Recommendations:

3. There should be an appeal from decisions of the Board in relation to approving or recognising courses of qualifications for registration.

All other prescribed requirements

This term may enable the regulations to require attributes which do not relate to the competency of applicants. Such attributes may be unjustifiable restrictions on competition. However the regulations do not currently prescribe any other requirements for registration. Therefore this is a trivial restriction.

Fit and proper person

The “fit and proper person” standard may constitute an unjustifiable restriction upon competition depending upon how this standard is interpreted and applied by the Board and Committee.

There is public benefit in only permitting fit and proper persons to practise dentistry. This benefit lies in the protection of the public from persons who have previously been guilty of certain behaviour or are likely to endanger public safety by, for example, not being medically fit to practise.

The costs are the costs to the community of reducing the numbers of dental care providers available. However, as long as the Board only excludes those persons who are potential dangers to public safety, these costs are justified in the public interest. The Board indicates that its criteria for determining whether the applicant is a fit and proper person to be registered is based on whether that person is competent to provide dental services in the relevant field of practice. The current Board has not refused an application for registration on this ground, but indicates that it considers that a criminal conviction for an offence such as fraud would be a ground to exclude a person based on the “fit and proper person” requirement under the Act.

The “level” of this standard is also relevant. The Board does not need to limit registration to people who are excellent or perfect²⁰, as long as the applicant meets the standard expected by the public.

In addition, the Board’s criteria must be transparent. The appeal processes discussed in part 2.5.2 of this report help to ensure this. However, it is also important that the public and the profession are aware of the standard applied by the Board.

The Review Panel believes the standard is justified.

²⁰ *Wright v Teachers Registration Board* (1983) 111 LSJS 177

Submissions were sought on whether the “fit and proper” person requirement should be amended or replaced. Some submissions suggested that it should be replaced by a more objective standard²¹, with a list of unacceptable criteria. However, the Review Panel considers that the current standard is well understood by the public and the profession. Set criteria with no discretion given to the Board may have the effect of excluding otherwise competent or proper persons from practice or allowing others, who may have behaved improperly but against whom a criminal conviction has not been obtained for some reason, to practise dentistry.

Further the Panel received no evidence of the Board interpreting this section in an inappropriate or anti-competitive manner.

Some Australian States and Territories require a similar standard for registration of dental care providers, for example “good character”²², “good fame and character”²³ and “fit and proper”²⁴. Two States provide a list of criteria which establish a similar standard²⁵. Most other South Australian legislation in relation to the registration of health professionals has the “fit and proper person” standard or the “good fame and character” standard which is likely to be amended to provide for this standard.

Therefore the Panel recommends that the “fit and proper person” requirement be retained.

2.1.2 Limited registration

Section 43 enables limited registration where, in the opinion of the Board, the applicant for registration lacks the necessary qualifications or experience or other prescribed requirements, or fulfils these requirements but is not a fit and proper person, for unrestricted registration.

Under sub-section 43(3), the Board may impose restrictions upon the places and times in which a registered person may practise dentistry, limit the branches of dentistry in which that person may practise, limit the period of registration, impose conditions of supervision or impose any other condition as the Board thinks fit.

This provision enables the Board to place a restriction upon a person’s conduct within the dental profession. The costs of this restriction are minimised if the Board utilises

²¹ Dental Technicians & Dental Prosthetists Society of SA Inc, SA Dental Therapists Association, South Australian Dental Service submissions

²² Victorian and Western Australian legislation.

²³ Queensland and Tasmanian legislation

²⁴ South Australian and Northern Territory legislation

²⁵ New South Wales legislation requires that a registrant have no criminal convictions, is not a habitual drunkard or addicted to drugs and has physical and mental capacity to practise. ACT legislation requires a registrant to be competent, not be convicted of a criminal offence rendering that person unfit in the public interest to practise dentistry and have committed no conduct within the preceding 10 years to bring the dental profession into disrepute.

criteria which accords with community and professional views on whether a person should be entitled to unrestricted registration. The criteria which the Board uses is based upon competence.

This section is most commonly used in the case of dentists trained overseas undertaking post-graduate studies at the University of Adelaide. The restrictions imposed are generally to limit their practice to clinics of the University of Adelaide and the South Australian Dental Service in addition to time restrictions. Another example where this section is used is in the case of teaching staff.

This restriction is a trivial restriction.

There is a benefit to the public in limitations being placed upon the registration of persons where the skills or expertise of the person are insufficient for them to qualify for unrestricted registration. This provision enhances involvement in the dental profession by enabling the Board to provide limited registration to a person who otherwise would not qualify for registration and, therefore, would be prevented from practising as a particular type of dental care provider. Provided that the criteria which the Board apply are based upon competency, and are applied consistently there are minimal anti-competitive costs of complying with this section. While conditional registration is a restriction upon the individual professional, it is not an unjustifiable restriction upon competition in the market for dental services.

2.1.3 Reinstatement of person on register

Section 52(3) provides that where a person's registration has been cancelled for unprofessional conduct, that person may only apply to the Board for reinstatement of the person's name to the register or roll after a period of two years after the cancellation. Under section 52(4) the Board must reinstate the applicant if it is satisfied that:

- (a) the applicant has sufficient knowledge and experience of, and is able to exercise the necessary degree of skill required for, the practice of dentistry pursuant to that registration; and
- (b) he or she is a fit and proper person to be registered under the Act.

Section 52(5) provides that the Board may require the person to obtain qualifications and experience specified by the Board and for that purpose may require the person to undertake a specified course of instruction and training. This provision is a restriction upon re-entering the dental profession. This is an intermediate restriction upon competition.

There is a public benefit in restricting the re-entry of a person into a profession where that person's registration in that profession has been cancelled for unprofessional conduct. There is benefit in competency standards being applied when a person has not practised dentistry for at least two years and has previously been found guilty of unprofessional conduct.

The cost of this provision is a private cost to the individual person whose registration is cancelled. These costs are therefore not significant to the community as a whole. There may also be anti-competitive costs to the public if the failure by the Board to reinstate dental care providers results in a shortage thereof. As the criteria for reinstatement are

based on competency, these criteria are appropriate.

Nevertheless, the period of two years is an arbitrary one and is not determined by any objective criteria for measuring competency. This period can therefore be seen as an arbitrary penalty imposed upon the person whose registration has been cancelled. The purpose of the disciplinary procedures under the Act are to protect public and not to punish the guilty party. Therefore this period may be an unjustifiable restriction on competition

Submissions were sought on whether the decision to reinstate an applicant should be based solely upon the action taken by that person to demonstrate their competency and capacity to practise, or whether there are public benefits in requiring a minimum period of time to elapse prior to the applicant being able to apply for reinstatement.

Most submissions which addressed this issue agreed that such a period is arbitrary and that the Board should have some discretion in relation to the reinstatement of a dental care provider.

Recommendations:

4. The requirement in sub-section 52(3) that a person may not apply for reinstatement for 2 years should be replaced with a requirement that the Board, upon cancelling a person's registration for unprofessional conduct, must specify a period of time that must elapse prior to that person applying for reinstatement. Such period should be not less than 12 months.

2.1.4 Fees

A person shall not be registered or reinstated on a register until that person has paid the prescribed fee(s). The current fee for registration is \$60 and the annual practice fee is \$240 for dentists, \$95 for clinical dental technicians and \$50 for dental hygienists.

A fee constitutes a restriction upon entry into the dental profession. It is likely to be a trivial restriction unless it is unreasonably high and thereby dissuades entry or re-entry to the profession. The current annual practice fee for dentists is significantly higher than interstate fees. A comparative table of fees is contained in Appendix 4.

The differences in the registration fees in different jurisdictions reflect the differences in the income and expenditure of the regulatory authorities in each jurisdiction, the priorities of the regulatory body and the attitudes of the community within the jurisdiction to regulation.

For example, the Dental Board of South Australia contributes \$100 of each annual practice fee to the University of Adelaide for Continuing Dental Education.

There is a public benefit in a system of registration of the dental profession. The public benefit of the fee relates to recovery of the costs of administering the Act. If there is public benefit in the regime established under the Act, the registration fee can be seen as a justifiable restriction. The system of registration not only ensures the competence of persons entering the profession but provides a record of information available to the public and employers in relation to the registered person's qualifications, conditions on registration and any disciplinary action taken against that person. The amount of fees is referable to the Board and Tribunal fulfilling their statutory roles under the Act.

Submissions were sought as to whether the fee for registration restricts entry into the dental profession. Only one submission believed that the annual practice fee was too high²⁶ in the circumstances.

The Review Panel concludes that the requirement of a fee is a trivial restriction which is justified, subject to the system of registration being justified, in the public benefit.

The only alternatives to the fee would be some other form of funding for the administration of the Act, such as government funding. This would impose a greater cost upon the community and therefore the fee requirement should be retained.

2.1.5 Restriction of Movement Between Jurisdictions

Mutual Recognition

Systems of registration may inhibit movement of dental care providers between jurisdictions, where dental care providers registered in another jurisdiction are unable to register in South Australia. Such a restriction reduces the pool of dental care providers within South Australia and thereby reduces the level of competition between dental care providers. Registration regimes established under the *Dentists Act*, however, do not restrict movement of dental care providers between jurisdictions due to the operation of the system of Mutual Recognition established under the *Mutual Recognition Act 1992 (Commonwealth)*.

Mutual Recognition enables dental care providers in equivalent occupations interstate to be registered in South Australia. The object of the scheme is, essentially, that if a dental care provider satisfies the requirements for registration interstate that person will be registered in South Australia without further training. A person registered pursuant to this regime is subject to the same laws regarding practice as other dental care providers registered in South Australia.

The *Mutual Recognition Act* (sub-section 20(5)) does preserve the ability of the Dental Board to impose conditions upon practice provided these conditions do not arise from the fact that the applicant is registered pursuant to the Mutual Recognition Scheme. While the scheme alleviates constraints upon the registration of dental care providers from interstate, the scheme does not, therefore, alter the restrictions embodied within the conditions imposed by the Dental Board upon practice. The impact of these conditions upon competition are analysed above.

²⁶ Dr G Ceravolo's submission

Suspension of registration of non-residents

Section 65 enables the Board to suspend the registration of a person who has not resided in the Commonwealth for a period of twelve months and provides that such suspension shall remain in force until that person once again resides in the Commonwealth.

This is a restriction on an individual's conduct within and re-entry to the dental profession, but not a restriction on competition within that market.

2.2 Practice Protection

2.2.1 Scope of Practice

Reservation of practice

Section 38 provides that only "qualified" persons shall provide dental treatment for fee or reward. A "qualified person" is a person (including a body corporate) who is registered or otherwise authorised by the *Dentists Act* or any other Act to provide dental treatment. "Dental treatment" is defined in section 4 to include:-

- (a) advice, attendances, services, procedures, and operations relating to the treatment of human teeth, gums, jaws and proximate tissue; and
- (b) the fitting of, and the taking of impressions or measurements for the purpose of fitting, dentures.

This section reserves the practice of dentistry to qualified persons. The reservation of practice is a barrier to entry into the market for dental services. It is a serious restriction on competition.

Public Benefit

There is public benefit in consumers having confidence that persons who provide certain treatment have the qualifications and expertise to provide that treatment. Dentistry involves procedures which carry significant risks to consumers and many of which are irreversible. The following is a discussion of these risks. Appendix 5 contains a summary of these risks.

Risks of Dentistry

There are risks of cross-infection from dental care provider to patient and from patient to patient. Diseases such as HIV and Hepatitis B may be transmitted by inoculation and some, such as tuberculosis, may be transmitted by inhalation. These risks are present with all dental care providers, including dental assistants. Cross-infection can occur whenever invasive procedures are undertaken, for example fillings (dentists, dental therapists), extractions (dentists, dental therapists), injections (dentists, dental therapists), scaling (dentists, dental therapists, dental hygienists) and making dentures (dental technicians, clinical dental technicians). There are risks of inhalation involved in most treatment procedures. Therefore, all these providers need to be trained in infection control.

X-rays may be taken by dentists, dental therapists, dental hygienists and dental assistants (with the necessary certificate). The risks involved of radiation being undertaken incompetently include cancer and birth defects in pregnant women. It is therefore important that these providers are adequately trained in the safety precautions.

The administration of drugs is undertaken by dentists and dental therapists. In administering drugs, dentists and dental therapists must be trained to ask the right questions to establish a medical history of the patient. For example, a patient with a heart condition may run the risk of exacerbating the condition if given certain types of anaesthetics; there may be adverse reactions if a patient is taking other medication. In addition, dentists and dental therapists must be trained and experienced in determining the genuineness of a patient's complaint, to deter possible inappropriate use. Dental hygienists and dental assistants also have a responsibility due to their access to drugs.

If procedures are simply performed incompetently, there are risks of death or irreversible harm. Any procedures such as drilling or extracting teeth are by nature irreversible. If performed incompetently, a patient may either lose the tooth or be required to have substantial restorative treatment. In any invasive procedure, including scaling or fillings, bacteria from the mouth or inside the tooth can be released into the blood stream causing infection, which can be dangerous particularly if the patient has a heart condition and the bacteria reaches the heart. Damage to the nerves in the jaw can occur in the case of the extraction of wisdom teeth, where the gum is cut and pulled apart to expose the bone. This can cause permanent numbness to the tongue and lip.

Incorrect choice of materials used for dentures, by the dentist, dental technician or clinical dental technician, may lead to corrosion and therefore toxicological problems. In the making of partial dentures, damage might be caused directly to a neighbouring tooth by the supports for the denture, or the increase in plaque might pose a risk to neighbouring teeth.

Further, cases have been reported where a drill has broken in a patient's mouth and the patient has swallowed a piece, with the piece becoming lodged in the lungs.

It is therefore appropriate to protect the public in some manner. All submissions received stressed the importance of protecting the public.

Costs

The costs of reservation of practice to the public are the costs of registration as discussed in part 2.1, and are justified if the system of registration is necessary to maintain public protection and confidence in the dental profession.

The Review Panel has concluded that the public benefits conferred by practice protection outweigh the costs.

Alternatives

The Review Panel considered alternative means to achieve public protection, such as protection under the common law, the *Fair Trading Act 1987 (South Australia)* and the *Trade Practices Act 1974 (Commonwealth)*. These Acts contain similar consumer

protection provisions, but those in the *Trade Practices Act* apply to companies and the *Fair Trading Act* to natural persons and unincorporated associations.

There is also protection under the common law, most importantly claims in negligence. This requires the consumer to initiate legal action against the registered person, which they may not be in a financial position to do.

These alternatives generally focus on compensation or punishment, rather than protecting the public by attempting to remove the potential for harm. In the case of dentistry and other health professions, financial compensation does not properly compensate for an irreversible injury. The importance of prevention is therefore greater.

Other alternatives which focus on prevention are legislation such as the *Public and Environmental Health Act 1987 (SA)*, the *Radiation Protection and Control Act 1982 (SA)* and the *Controlled Substances Act 1984 (SA)*. While these Acts do provide some protection, they are specific to certain areas of practice and are not therefore not adequate in themselves.

Self-regulation is not an option as an alternative to reservation of practice as it can only regulate persons who voluntarily become members of an association and therefore become subject to its competency and other requirements. Whilst market forces will encourage the majority of professionals to become members, there will always be persons practising a profession who are not members and therefore whose competence is not subject to scrutiny other than by the means discussed above.

The Review Panel has also considered restricting only the provision of core practices to qualified persons. This means only reserving the areas of dental practice which carry significant risk. However, the Panel considers the reservation of the practice of dentistry as defined in the Act to be necessary to protect the public, as there is significant risk involved in all areas of such practice.

The Review Panel has therefore concluded that these alternatives would not protect the public sufficiently due to the nature of dentistry and the significant degree of risk involved. Accordingly, the Review Panel recommends that the restrictions caused by the reservation of practice in section 38 should be retained.

The Panel notes that legislative reservation of the practice of dentistry is currently the model used by all other Australian States and Territories.

Within the registered dental profession

The scopes of practice of registered dental care providers are defined by the Act.

Specialists

Section 40 provides that a dental specialist may only provide dental treatment in the branch of dentistry for which that person is registered, other than with the written authorisation of the Board. The branches of specialty are prescribed by the regulations²⁷. This is a restriction upon conduct within the market, which is an intermediate restriction.

The public benefit in restricting a specialist to that area of specialty is to protect the public, by ensuring the competence of a person who holds out to be a specialist in the particular field of specialty. The Panel is of the opinion that consumers are able to choose for themselves in this instance, whether the specialist is competent to undertake general dentistry. The consumer will generally be aware that because that person is a specialist, their competence in one particular area will be greater than others. This does not mean that a specialist is incompetent in other areas of dentistry. The effect of information asymmetry is minimal in this case.

Anti-competitive costs in the marketplace are increased due to the need for a consumer to obtain treatment from more than one source.

Submissions were sought on whether the restriction on practice of dental specialists is justified. The submissions referring to this issue agreed that a register of recognised specialties assists consumers to make decisions. However, most believed specialists should continue to be restricted to practising within their area of specialty²⁸. One submission²⁹ suggested that specialists be permitted to register on both the general and specialist registers to ensure competence in general dentistry.

The Review Panel is of the opinion that this restriction is not justified and should be removed. The Board is still able to limit a specialist's practice in areas that the Board does not believe the specialist to be competent in.

Recommendations:

5. The restriction that dental specialists may only provide dental treatment in their registered branch of specialty contained in sub-sections 40(3) & (4) should be removed.

Clinical Dental Technicians

²⁷ Third Schedule

²⁸ Australian Dental Association submission at 19
Academy of Australian & New Zealand Prosthodontists submission at 1
SA Dental Therapists Association submission at 7

²⁹ The SA Dental Therapists Association submission

Section 41 provides that a registered clinical dental technician may only provide certain dental treatment, which relates to the fitting of dentures. This is a restriction on conduct, which is an intermediate restriction upon competition. The benefit of this restriction is to limit a clinical dental technician's area of practice to such area that that person is qualified in and hence to protect the public.

The effect of this restriction is to prevent clinical dental technicians from making partial dentures. The Review Panel accepts that clinical dental technician training or experience may not currently be sufficient to confer competence in this area of practice. The main concern noted from the submissions is lack of training in infection control.

In all other Australian States and Territories, except Western Australia, the equivalent professions are permitted to make partial dentures. In those States the requirements for registration also include qualifications to reflect the ability to make partial dentures. The Panel notes that under mutual recognition³⁰, South Australian based persons are able to obtain registration interstate as a clinical dental technician (or equivalent) and thus be qualified in that State to make partial dentures. However, in South Australia their scope of practice is limited by the Act to making full dentures.

The anti-competitive costs of this provision are significant as the cost to the consumer of having a dentist make the partial denture is high relative to a clinical dental technician's cost³¹.

Most submissions which addressed this issue agreed that clinical dental technicians should only be able to undertake such duties as they are qualified, and therefore competent, to undertake. The Review Panel agrees and is of the opinion that there is no justification in preventing a person who is competent to fit and construct partial dentures from so doing. The Panel therefore believes that there is no justification in the restriction on the conduct of clinical dental technicians and that, in line with the rest of Australia, they should be permitted to make partial dentures. Obviously, clinical dental technicians will need to demonstrate competency in this field of practice. The Panel notes that there is a bridging course at Royal Melbourne Institute of Technology.

The Review Panel accepts that many of the currently registered clinical dental technicians became registered through a "grandfather clause" by demonstrating competency in clinical practice³². The Panel considers that it is important for all currently registered clinical dental technicians to demonstrate competence in the making of partial dentures and associated matters such as infection control, prior to them being granted full registration under any amendments. This could be achieved by demonstrating the ability to be granted full registration interstate. New applicants would simply apply for registration in the usual way. It would be the Board's responsibility to recommend qualifications to be prescribed to ensure a registrant's competency.

³⁰ see part 2.1.5

³¹ The Dental Technicians and Dental Prosthetists Society of SA submission, at 2, states that the cost for full upper and lower dentures are: dentist \$864.45, clinical dental technician \$648.35

³² Australian Dental Association (SA Branch) submission at 20

A further issue was raised by a submission³³, which was not raised in the Issues Paper, namely the name used by clinical dental technicians. The Board suggested that this class of registration be changed from “clinical dental technician” to “dental prosthetist”. This would be consistent with other States and, therefore, would limit potential confusion to the consumer. The Review Panel believes that this could only enhance public protection. However, holding out as either a “clinical dental technician” or “dental prosthetist” by persons not so registered should be prohibited.

Recommendations:

6. The restriction on clinical dental technicians on making partial dentures, contained in sub-section 41(2)(a), should be removed.
7. References in the Act to “clinical dental technician” should be changed to “dental prosthetist” except that section 36 should prohibit the illegal holding out as a “clinical dental technician” as well as a “dental prosthetist”.
8. Persons currently registered as clinical dental technicians should be required to demonstrate competence in working in mouths containing natural teeth, dental implants³⁴ or parts thereof, in order to obtain full registration as a dental prosthetist. For this purpose, the Board should report to the Minister as to the training or other requirements that in the Board’s opinion are necessary to ensure such competence. In the absence of such demonstration, such persons should be granted conditional registration as a dental prosthetist, subject to that persons current registration and competence.

Dental Hygienists

Section 42 provides for restrictions and conditions on the provision of dental treatment by dental hygienists. These are contained in regulation 12, and include the supervision of dental hygienists under certain conditions and for the preparation of treatment plans to be followed by the dental hygienist.

This is a restriction on the conduct of dental hygienists, which is an intermediate restriction upon competition. Restriction of dental treatment by dental hygienists protects the public by ensuring that dental hygienists only undertake treatment that they are sufficiently trained and experienced to undertake. Similarly the requirement for supervision is a limitation which reflects the extent of their training and expertise.

The costs of restrictions upon the ability to practise as a dental hygienist are minimal as the restrictions are what is reasonably required to ensure the public has a confidence in the skills of dental hygienists.

The submissions received agreed that the restrictions on the practice of dental hygienist

³³ Dental Board of SA submission

³⁴ Dental implants were not common at the time of the introduction of the Act, but are now. Infection issues are at least as important with dental implants as with natural teeth. Therefore, for a dental prosthetist to gain full registration, competence in relation to implants should also be demonstrated. Of course, this decision is up to the Board.

were justified in the public benefit, except for two submissions³⁵ who both suggested removing some of the restrictions. However the Review Panel has concluded that the restrictions provided in the regulations on the practice of dental hygienists are necessary to protect the public, given the scope of their training and expertise.

An alternative to this legislative restriction would be to retain the supervision requirement but leave the scope of practice decisions to be made by the employer. This shifts some of the Board's responsibility to ensure competence of hygienist to the employer. The Review Panel is of the opinion that this system would be insufficient to protect the public.

The Review Panel concludes that the restrictions on the practice of dental hygienists should be retained.

Dental Therapists

Section 85 enables the South Australian Dental Service Incorporated to provide dental treatment to children through the instrumentality of dental therapists if the provision of dental treatment is under the control of a dentist and the child, after turning thirteen, has been examined by a dentist employed by the South Australian Dental Service. A dental therapist is a person who has qualifications and experience determined by the Minister.

This section places a restriction upon the conduct of dental therapists. Other provisions of the Act prevent them from practising other than as employed by the South Australian Dental Service. Accordingly dental therapists are unable to practise in the private sector. However the Act does not restrict the type of treatment that dental therapists are able to provide.

There is public benefit in a system which reflects dental therapists' level of training and skill by restricting their practice to children and by providing for a control requirement. However the Review Panel has not been provided with any evidence of the public benefit in restricting the employment of dental therapists to the South Australian Dental Service.

The costs of these restrictions include limiting the availability of dental treatment to consumers and to increase the cost of dental services in the private sector.

Dental therapists were introduced to provide accessible dental care when the incidence of dental caries in children was high³⁶. This need has reduced considerably due the introduction of fluoridation, among other things³⁷. One submission³⁸ argued that therefore dental therapists should be encouraged to retrain as auxiliaries comparable to dental hygienists³⁹. Further, the demand for dental care has increased in other sectors of

³⁵ The Dental Technicians and Dental Prosthetists Society of SA and the South Australian Dental Service submissions

³⁶ Australian Dental Association (SA Branch) submission at 14

³⁷ as discussed in part 1.2

³⁸ Australian Dental Association (SA Branch) submission

³⁹ there is a bridging course available

the community, such as the ageing population and adult clients of SADS, for whom the waiting lists are becoming increasingly long.

The Review Panel concludes that there is no justification in retaining the provisions which restrict the employment of dental therapists to the South Australian Dental Service. The restrictions relating to dental therapists working on children only are only justified to the extent that dental therapists are currently not trained to work on adults. Therefore this restriction should be removed subject to dental therapists obtaining additional training or expertise.

The Panel notes the concern of the Australian Dental Association (SA Branch)⁴⁰ that removing these restrictions could result in dental therapists leaving the employment of SADS and entering the private sector in significant numbers, thereby disadvantaging users of SADS. The Panel does not believe that any such outcome is likely to be significant.

The control requirements are justified in the public interest. The Review Panel does not consider any alternatives to these restrictions to be sufficient to protect the public. Therefore this restriction should be retained.

Of course, any removal of restrictions relating to the employment of dental therapists must coincide with the introduction of a registration system for dental therapists. The public benefit conferred by the registration of dental therapists would be to allow the public a wider range of dental services. Registration would protect the public from incompetent dental therapists in the same way as, for example, registration of dentists and dental hygienists does. The criteria for registration and disciplinary structure should be the same as with the other dental care providers.

The additional costs to the community of the registration of dental therapists are only the costs of administering more registrants and are therefore likely to be covered by the additional fees being received by the Board.

Recommendations:

9. There should be a requirement that dental therapists be registered.
10. The criteria for registration as a dental therapist and disciplinary and competency procedures should be the same as for the other registered dental care providers
11. Dental therapists should be permitted to practise dentistry with no restrictions on employment.
12. The restriction preventing dental therapists from working on adults should be removed once competence to do so is able to be demonstrated. For this purpose, the Board should report to the Minister as to the training or other requirements that in the Board's opinion are necessary to ensure such competence.
13. Dental therapists should be only permitted to practise dentistry under the control of a dentist.

One submission⁴¹ commented that there should be consistency in the wording of the

⁴⁰ in its submission dated 12/2/99

⁴¹ ADA (SA Branch) submission (12/2/99)

new provisions relating to dental therapists and dental prosthetists. It was suggested that the Victorian wording be used in relation to the removal of the restriction on dental therapists working on adults⁴². The Review Panel believes that any inconsistency in wording is necessary due to the differences in the issues between the two groups. Further, the Victorian recommendation is not as positive as the Panel believes its position should be.

2.2.2 Reservation of title

Title reservation is achieved by sections 35 to 37, which prevent the holding out of a person as a dental specialist, general dentist, clinical dental technician or dental hygienist unless that person is registered as such.

Title reservation aims at ensuring demarcations recognisable by the public between each of the registered dental professions and between registered and unregistered persons.

Any assessment of restrictions associated with reservation of title involves an assessment of the qualifications and/or experience required to utilise the title, and whether this level of expertise demands that the profession be recognised by the public through the use of a reserved title. As the Review Panel concluded above, the requirements for registration are necessary to protect the public.

Title protection is an intermediate restriction on competition.

All submissions agreed that title protection is necessary to protect the public interest. The public benefit arising from title protection is the confidence conferred on consumers that a particular registered dental care provider has qualifications and expertise rendering that person competent, as determined by the Board, to provide dental treatment. This benefit extends to other legislation or systems, such as Medicare, which refer to registered persons.

The costs of title protection are the costs of registration, as discussed above. The Review Panel concludes that the public benefits outweigh the costs of title restriction and that, therefore, the restrictions contained in sections 35 to 37 are justified in the public interest.

The alternatives to legislating to reserve titles include self-regulation, whereby the membership of a professional body entitles the member to use a certain title, as in the case of the title “Certified Practising Accountant”. However, such a system is only appropriate where there is no reservation of practice required. Membership of such a body could not be compulsory and therefore is not effective to achieve the reservation of practice as in the current system under the Act. In addition, legislative title protection is important for third parties, such as health insurance funds and government agencies, for example pharmaceutical benefits scheme, to be able to readily identify providers and determine eligibility to provide particular services⁴³. Self-regulation could not achieve this.

⁴² See Appendix 3, Recommendation 16.

⁴³ for example Australian Dental Association (SA Branch) submission at 24

The Panel is of the opinion that in the case of dentistry, reservation of practice as well as reservation of title is required since the risk of harm or injury is too great, therefore self-regulation would not be sufficient.

Therefore, the Panel recommends that sections 35 to 37 are retained.

Dental Technicians

Many of the submissions⁴⁴ raised another issue which was not raised in the Issues Paper, namely the registration of dental technicians. Introducing a further class of registration introduces a further restriction. However, the Review Panel believes that it would be in the public interest to register dental technicians to protect the title “dental technician”. There should be no practice protection conferred by the Act in relation to dental technicians.

This is an intermediate restriction on the conduct of dental technicians. The public benefit would be to ensure that the public and other dental care providers can recognise providers with the necessary qualifications and expertise. The public needs to be protected from the risks involved, such as the risks of cross infection.

The costs of this restriction would be to the consumer if the costs of registration were to be passed on by the dental technician. However, as no practice protection is recommended, the consumer would still have a choice between registered and unregistered providers. Therefore these costs are minimal. There is also additional administration costs, as with the registration of dental therapists, which will also be minimal.

The alternatives to this legislative restriction are the same as those in relation to the current registered professions, discussed above. Additionally, a system of voluntary licensing could be established by the Act, thereby protecting the title “licensed dental technician”. The Review Panel concludes that these alternatives are insufficient to protect the public.

The Panel notes that dental technicians are registered/licensed and subject to practice and title protection in Victoria, New South Wales, ACT and Queensland.

Recommendations:

14. The holding out provisions of the Act be amended to also apply to the titles “dental prosthetist”, “dental therapist” and “dental technician”.
15. The Act should include provisions for the registration of dental technicians.
16. The criteria for registration as a dental technician and disciplinary and competency procedures should be the same as for the other registered dental care providers

⁴⁴ for example Don Schrapel, Neil Sullivan, Dental Technicians & Dental Prosthetists Society of SA Inc

2.2.3 Other Practice Protection Provisions

Practitioners to be indemnified against loss

Section 78 has not been proclaimed but is still relevant to this review. Initially this section was not proclaimed because the necessary indemnity cover was not available.

This section prohibits a dentist or clinical dental technician from practising as such unless he or she is insured in a manner and to an extent approved by the Board against civil liabilities that might be incurred by that person in the course of his or her practice. This restricts a persons ability to practise dentistry and acts a potential barrier to entry to the dental profession.

There is public benefit in ensuring registered persons are adequately insured to cover any liabilities incurred by them against a member of the public.

Anti-competitive costs only arise from this section if the cost of the insurance deters persons from practising and thereby significantly reduces the number of dentists or clinical dental technicians entering the dental profession. In relation to dentists, most are insured by choice. Most are insured with the Dental Protection Society at a cost of approximately \$690 per annum for members of the Australian Dental Association and approximately \$1200 per annum for non-members. There was no evidence provided in the submissions to indicate that this requirement would deter a person from entering the market.

All submissions which addressed this issue agreed that indemnity insurance was important to protect the public. The Review Panel concludes that in practice this restriction is trivial and is justified in the public interest.

Recommendations:

17. Section 78 should be proclaimed provided that the appropriate level of indemnity cover is available.

2.3 Ownership and Business Restrictions

2.3.1 Registration of companies

Section 38, as discussed in part 2.2.1, also applies to bodies corporate. The section creates a requirement that incorporated dental practices, in order to practise dentistry for fee or reward, be registered under the Act, unless they are otherwise authorised as qualified persons.

Section 45 provides for the registration of companies on either the general register or the clinical dental technician's register on certain conditions in relation to directors, members, voting rights etc. In particular, section 45 restricts the ownership of dental practices to dentists or clinical dental technicians and their prescribed relatives. In addition, the Board must be satisfied that the memorandum and articles of association comply with these conditions and are "otherwise appropriate" to a company formed for the purpose of practising as a dentist or clinical dental technician.

Sections 46 to 48 contain restrictions on the conduct of companies, including administrative requirements and restrictions on the number of registered persons a company may employ.

These sections constitute a barrier to entering the dental profession (as a director/shareholder) and on the conduct of incorporated dental practices. They also enable the Board to potentially restrict competition depending on its interpretation of "otherwise appropriate". This is a serious restriction upon competition.

There may be public benefit in having appropriately qualified persons own and run a dental practice and in particular be responsible for the confidentiality, safety and public protection issues of a practice. If the Board or Tribunal are to discipline a company in relation to, for example, unprofessional conduct, it may be important for the Board and Tribunal to be able to discipline the directors also.

There may also be a benefit to the public in preventing the over commercialisation of the dental profession. The object of these sections may be to prevent the establishment of large dental companies and "chain-stores". There is an argument that these types of practices may tend to focus on profit-margins ahead of their duty to their patients⁴⁵.

However, the Review Panel can see no reason why unregistered persons would have lower professional and ethical standards than registered persons. In any event, it will always be up to the individual registered person to maintain his or her own standard of professionalism.

The anti-competitive costs of this section include that the fees charged for dental services may be higher than in a situation where ownership is unrestricted, due to, for example, economies of scale. In addition, there is a cost to the public in not permitting the establishment of multidisciplinary practices which maintain a focus on total health care⁴⁶. There is an additional cost to the public in excluding unregistered persons with

⁴⁵ for example Australian Dental Association (SA Branch) submission at 25

⁴⁶ South Australian Dental Therapists' Association submission at 9

business and managerial skills.

The Review Panel concludes that the ownership restrictions are not justified and should be removed. Of course, only qualified persons should be permitted to perform dental treatment. This means that section 38 should only prohibit the performing of acts which constitute dentistry, rather than the provision of dental treatment, by unqualified persons.

The Review Panel notes that the legislation in Victoria, New South Wales, Northern Territory and Western Australia has similar ownership restrictions. The Victorian recommendations⁴⁷ include that all ownership restrictions should be removed.

The Review Panel is of the opinion that there should be some responsibility by an (unregistered) employer of a registered person to maintain a high standard of dental treatment. This is not completely covered by existing law and could lead to problems such as attempts by employers to influence registered persons to provide inadequate service or overservice. The Victorian review recommends that it should be “an offence for an employer to unduly influence an employee to perform dentistry in a manner detrimental to the welfare of the consumer”⁴⁸. The Review Panel believes that this provision should also be included in the South Australian Act.

This would introduce a restriction on the conduct of employers of dental care providers, but the restriction on competition is assessed to be trivial. The public benefit is clearly to protect the public by preventing the possible problems discussed above. There may be some compliance costs to the employer which could be passed on to the consumer, but these costs are minimal.

The alternatives to this provision would be to retain the registration requirement for companies, but to remove all the requirements as to members and conduct. Then, the Board could discipline the company as a registered person. The Review Panel believes that this alternative is not practical and places too great a restriction on the company. The other alternative is to leave the regulation of companies to the general law such as the *Trade Practices Act*, as discussed in part 2.2.1.

The Review Panel considers that due to the risks of irreversible harm⁴⁹ these alternatives are not adequate in themselves to protect the public.

The Panel believes that the Board should also have the power to inspect premises which are the subject of a complaint of unprofessional conduct, to help maintain these standards. To assist with the enforcement of these provisions, the Board should obtain the address of all premises in which registrants practise as well as the name and address of their employer, upon registering and re-registering. The Board may require this information at any time pursuant to section 58.

⁴⁷ see Appendix 3

⁴⁸ Victorian Department of Human Services *Review of Dentists Act 1972 and Dental Technicians Act 1972, Final Report*, (July 1998) at 19

⁴⁹ also discussed in part 2.2.1

There is an argument that misleading and deceptive advertising should be an offence under the Act, to allow for the prosecution of registered and unregistered owners. However, the Panel believes that the prohibition on misleading and deceptive conduct in the *Trade Practices Act* and the *Fair Trading Act* are sufficient to protect the public against such conduct⁵⁰ and that therefore no additional offence should be created.

Recommendations:

18. All ownership restrictions, direct and indirect, contained in the Act should be removed.
19. It should be an offence for an employer to unduly influence an employee to perform dentistry in a manner detrimental to the welfare of the consumer.
20. The Board should have the power to enter premises for the purpose of inspecting those premises, if such premises are the subject of a complaint before the Board. Failure to allow the Board to enter premises should be an offence.

2.3.2 Restrictions on Employing Registered Persons

Section 38(1)(a) provides a restriction on who may employ registered persons. In relation to natural persons, a qualified person is required to provide any dental treatment personally, unless that person is a dentist providing treatment through the instrumentality of a qualified person. This means that no-one, whether registered or not, except dentists, is permitted to employ a registered person.

This is an intermediate restriction on conduct. The public benefit and costs conferred by this provision are the same as those in relation to the restrictions of corporate ownership. In addition there are costs to the public, namely those passed on to the consumer arising from, for example, the inability of a clinical dental technician to employ another clinical dental technician or a dentist. This cost is not outweighed by the public benefit.

By the same reasoning as in part 2.3.1, the Review Panel concludes that the alternatives to this legislative restriction are sufficient to protect the public.

Recommendations:

21. The restriction contained in sub-section 38(1)(a), namely that a registered person provide dental treatment personally, should be removed.

⁵⁰ see further the discussion on advertising in part 2.5

2.3.3 Restrictions on Corporate Names

Regulation 14 prohibits the use by corporate practitioners of any name calculated to attract patients or clients.

A restriction on a company's ability to market itself is a restriction on conduct within the market. This is an intermediate restriction.

The public benefit and cost issues are the same here as in relation to advertising restrictions. There is public benefit in prohibiting misleading or deceptive names. However there is adequate protection under consumer protection laws such as the *Fair Trading Act* and the *Trade Practices Act*.

Recommendations:

22. Regulation 14 should be removed.

2.4 Disciplinary Actions

The Board and the Tribunal are empowered by the Act to discipline registered persons guilty of "unprofessional conduct". A complaint against a registered person is dealt with by the Board, unless the Board believes the allegations are "sufficiently serious", in which case the matter is referred to the Tribunal.

Upon the Board finding a person guilty of unprofessional conduct it may reprimand the person⁵¹. The Tribunal may reprimand or fine (not exceeding \$5000) a person found guilty of unprofessional conduct or may suspend, cancel or impose conditions in relation to that person's registration⁵².

The Tribunal's powers to discipline are potentially restrictions, trivial through to serious, upon the conduct of registered persons. The power to reprimand is a trivial restriction.

Central to these restrictions is the definition of "unprofessional conduct" and its application by the Board and the Tribunal. Section 4 provides that "unprofessional conduct" includes:

- (a) improper or unethical conduct in relation to the practice of dentistry; and
- (b) incompetence or negligence in relation to the practice of dentistry; and
- (c) a contravention of or failure to comply with:-
 - i) a provision of this Act; or
 - ii) a condition imposed by or under this Act in relation to the registration of a person under this Act.

This definition of "unprofessional conduct" may be restrictive depending upon the manner in which the Board or the Tribunal interprets the phrases "improper or unethical conduct" and "incompetence or negligence". Determinations by the Board or Tribunal that certain conduct is "unprofessional" constrains behaviour within the dental profession. Depending

⁵¹ section 63(5)

⁵² section 67(3)

upon the approach of the Board and the Tribunal this may be an intermediate or serious restriction upon competition.

There is an obvious public benefit in including “improper and unethical conduct” and “incompetence and negligence” within a definition of unprofessional conduct. Public safety and confidence in the dental profession should be maintained.

Restrictions upon conduct, and hence upon competition, arising from the disciplinary structure of the Act only give rise to anti-competitive costs if inappropriate standards in relation to “unprofessional conduct” are applied. Provided that the criteria used to determine unprofessional conduct are standards which would be reasonably expected by the public and the dental profession, then the exercise of the Tribunal’s powers to impose conditions, cancel or suspend registration are not unjustifiable restrictions upon competition. However, it is also arguable that the standard of conduct applied should be the public standard only, which may constitute a lower standard of service (while still requiring competence) and consequently a lower cost. However, the Review Panel is satisfied that the Board does not use too high a standard of conduct when determining “unprofessional conduct” matters⁵³. Therefore, this is a trivial restriction.

Code of Ethics

The Board’s Code of Ethics (June 1998) is not provided for in the Act and is not enforceable in itself. However, in any disciplinary proceedings the Board and the Tribunal are guided by the Code in determining whether a registered person’s conduct has been “unprofessional”.

The Code is important in the context of public protection, in that it makes the Board’s interpretation of “unprofessional conduct” more transparent to both the public and profession. This is particularly important in the environment of information asymmetry and where each profession may have a different standard of conduct. It is important, therefore, for the Code to be readily available to the public and the profession.

Most submissions agreed that the definition of “unprofessional conduct” adequately reflects community and professional expectations of conduct, but that a greater degree of transparency should be achieved while still leaving some discretion with the Board. There was no evidence provided of the Board using its disciplinary powers in an inappropriate manner.

However, one submission suggested that to increase transparency, the definition of “unprofessional conduct” should include “conduct that is in contravention of the Code of Ethics as declared from time to time by the Dental Board of South Australia”⁵⁴. The Review Panel agrees that this would increase transparency. However this also increases the potential for restrictive decisions by the Board and Tribunal. One possible solution is for the Code to be contained in the Regulations, to enable the Governor’s approval. However this makes the Code difficult to change as dental practice evolves over time. The approval by an independent party is important and therefore the Review Panel concludes that any such Code should be approved by the Minister, with the Board having power to make recommendations to the Minister in relation thereto. The Code should be a “Code of Conduct” to reflect the

⁵³ since 1994, there have been only four cases of suspension of registration for unprofessional conduct, and no cases of cancellation of registration.

⁵⁴ The Dental Board of SA submission at 15

public protection issues.

Recommendations:

23. The definition of “unprofessional conduct” should be amended to include “conduct in contravention of the Code of Conduct as approved by the Minister from time to time”.
24. The functions of the Board should include to make recommendations to the Minister in relation to a Code of Conduct.

Advertising

Advertising is not specifically restricted by the Act or regulations. However, the Board currently uses its disciplinary powers to restrict advertising by prohibiting various types of advertising and other marketing tools in its Code of Ethics.

For example, section 42 prevents a dentist from advertising in such a way as to bring the dental profession into disrepute. This is consistent with the Act’s definition of “unprofessional conduct”, which includes “unethical conduct”. However provisions such as this in the Code are not justifiable restrictions upon conduct, because the prevention of such conduct is not necessarily in the public benefit but for the benefit of the dental profession. These types of restrictions restrict the information available to the consumer. Therefore there is a possibility of the Board or the Tribunal using their disciplinary powers to restrict competition unjustifiably.

The Code also prohibits false, misleading and deceptive statements, claims or representations about professional qualifications, experience or services. Such a restriction is clearly for the public benefit. However, there are adequate alternatives in legislation such as the *Trade Practices Act* and the *Fair Trading Act*, which prohibit misleading and deceptive conduct. Therefore, the Review Panel concludes that it is not the function of the Board to deal with such advertising and marketing issues, and recommends that the Minister should not approve any provisions in a Code of Conduct purporting to restrict such conduct.

Recommendations:

25. Any Code of Conduct containing advertising restrictions should not be approved.

2.5 Regulatory Bodies

The Act establishes three bodies to administer the Act:

- (a) The Dental Board⁵⁵;
- (b) The Dental Professional Conduct Tribunal⁵⁶; and
- (c) The Clinical Dental Technicians Registration Committee⁵⁷.

These bodies together are responsible for the registration of dental care providers, administration of the Act and discipline under the Act. As administrative and disciplinary bodies, it is possible for them to create, and impose, restrictions upon competition in the dental profession. It is also possible for the Board to restrict competition within the market for dental training/education.

The membership and proceedings of these bodies, legislative restraints upon the use of powers, including appeals processes, and the functions of the bodies are relevant, therefore, to the extent to which they could restrict competition through the exercise of their functions.

2.5.1 The Dental Board

Functions of the Board

Section 12 lists the functions of the Board. These functions include:

- (a) to consult with appropriate authorities as to syllabuses and courses to enable persons wishing to apply for registration under this Act to acquire the necessary qualifications, experience and skill;
- (b) to make recommendations to the Minister in relation to regulations prescribing the qualifications, experience and other requirements to be fulfilled by persons applying for registration under this Act;
- (c) to make recommendations to the Minister in relation to the making of other regulations under this Act;
- (d) to establish and maintain registers of persons qualified to practise dentistry in accordance with this Act;
- (e) to carry out such other functions as are prescribed by this Act.

These functions have the potential to enable the Board to restrict entry into and participation within the dental profession. Sub-sections 12(a) and (b) enable the Board to restrict the market of providing training for the dental profession. Sub-section 12(e) enables the Board to restrict entry into the profession by enabling the Board to set the standard for registration⁵⁸.

The scope for the Board to use its powers to restrict competition is purportedly

⁵⁵ section 5

⁵⁶ section 22

⁵⁷ section 29

⁵⁸ see discussion on sections 39 to 42

minimised by sub-section 12(1), which directs that the “Board shall exercise its functions with a view to achieving and maintaining the *highest* professional standards both of competence and conduct in the practice of dentistry in this State”. This technically allows the Board to only register the persons who achieve the highest standard, for example the “best” dentist. This is clearly a restriction that should be removed. The standards that the Board should be protecting are those expected by the public and the profession.

The Review Panel also believes that it should be made clear that the primary function of the Board is to protect the public.

Recommendations:

26. The words “the highest” should be removed from sub-section 12(1).
27. Sub-section 12(1) should read “The Board shall exercise its functions with a view to *protecting the public* by achieving and maintaining *appropriate* professional standards.....”

In addition the Act provides safeguards by way of provisions relating to the procedures of the Board, the appeals procedure set out in Part 5 of the Act and natural justice provisions, all of which are discussed in part 2.6.4 of this Report. Relevant also to this review is the membership of the Board, as this may determine how the Board exercises its power.

Membership of the Board

Section 6 provides that the Board shall consist of the following members appointed by the Governor:

- (a) six dentists - three elected by a majority of dentists, two nominated by the Minister and one nominated by the Council of the University of Adelaide;
- (b) one legal practitioner nominated by the Minister; and
- (c) one consumer representative nominated by the Minister

This section may restrict competition in that it discriminates between competitors by not allowing for membership of clinical dental technicians or dental hygienists. It also potentially restricts competition by allowing for the possibility of decisions to be taken by the Board which restrict competition of these groups.

There is public benefit in some members of the Board having a specific knowledge of the profession. The Panel believes that this will still be achieved if there is a balance between dentists and parodontal professionals. However in South Australia there are approximately 880 dentists, 38 clinical dental technicians and 150 dental hygienists. In addition, dental therapists and dental technicians should also be considered if they become registered. Therefore it would be difficult in practice to achieve a representative balance on the Board.

There is a potential cost to the public if anti-competitive decisions are made. This risk appears to be minimal and is reduced by the legislative safeguards discussed in part 2.5.4.

However, most of the initial submissions agreed that there should be at least one parodontal professional on the Board. With an increased number of registered parodontal professionals, due to the registration of dental therapists and dental technicians, the Review Panel is of the opinion the Board should contain a member or members to represent dental therapists, dental hygienists, dental prosthetists and dental technicians. Many of the submissions in the second consultation period agreed that there should be three additional registered members namely one dental hygienist, one dental therapist and one member to represent the interests of both dental technicians and dental prosthetists. Given the numbers of both dental hygienists and dental therapists and the difference in duties and philosophies, the Panel agrees that it is appropriate to have separate representation on the Board for these two groups.

Due to the increased number of registered persons on the Board, the Panel recommends that there should be a second consumer representative and that there should be only two, rather than three, elected dentist members. One submission⁵⁹ pointed out that at a Federal level consumers are selected, based upon skills and experience, by the Consumers' Health Forum. It was suggested that a similar process should occur in South Australia using an established South Australian Consumer Representatives Network under the auspices of the Consumers' Health Forum. The Review Panel agrees that this is a useful resource. However, the Panel believes that the Minister should nominate the representatives with input from this or other consumer groups.

Recommendations:

28. The membership of the Board should be:
- (a) five dentists - two elected by a majority of dentists, two nominated by the Minister and one nominated by the Council of the University of Adelaide;
 - (b) one representative of dental prosthetists and dental technicians nominated by the Minister;
 - (c) one dental therapist nominated by the Minister;
 - (d) one dental hygienist nominated by the Minister;
 - (e) one legal practitioner nominated by the Minister; and
 - (f) two consumer representatives nominated by the Minister upon advice from consumer groups including the South Australian Consumer Representatives Network.

⁵⁹ Council on The Ageing submission

Incompetence and Incapacity

Part of the Board's functions under the Act are to deal with complaints in relation to the incompetence or incapacity of a registered person.

Section 59 empowers the Board to make inquiries into allegations that a registered person has practised in a branch of dentistry without having or exercising sufficient knowledge, experience or skill. If the Board is satisfied that the allegations are established, it may impose conditions on the person's right to practise.

Section 60 empowers the Board to suspend a persons registration and impose conditions on a person's right to practise dentistry if the Board is satisfied that the ability of a registered person is impaired to such an extent that it is desirable, in the public interest, that such an order be made.

The ability to suspend registration and impose conditions is a restriction on a person's ability to practise dentistry. This is a trivial restriction on competition in the market as a whole.

There is public benefit in a body being able to suspend and impose conditions upon persons who are not competent to practise dentistry or whose ability to practise dentistry is impaired. This is particularly important in relation to dentistry, where there is a broad range of registered providers.

The Board uses objective standards of competency and capacity and therefore the anti-competitive cost is minimal. The legislative safeguards discussed in part 2.5.4 also help to minimise any anti-competitive cost.

2.5.2 The Dental Professional Conduct Tribunal

The Dental Professional Conduct Tribunal ("the Tribunal") is responsible for discipline under the Act where a complaint is made to the Board that a registered person is guilty of unprofessional conduct and the Board is of the opinion that the allegations or evidence against the person are sufficiently serious⁶⁰. Therefore, there is potential for the Tribunal, like the Board, to restrict competition.

The Tribunal is independent of the Board. Section 23 provides that it shall consist of the following members:

- (a) the chairman who is a judicial officer, special magistrate or legal practitioner of not less than ten years standing;
- (b) three dentists;
- (c) one representative of clinical dental technicians;
- (d) one dental hygienist; and
- (e) one consumer representative.

Section 24 provides that for the purposes of proceedings, the Tribunal shall be constituted by the chairman and at least two other members. In proceedings against a dentist the "other two members" may only include the dentist and consumer members. In proceedings against clinical dental technicians and dental hygienists there shall be a

⁶⁰ sections 63 & 67

member of the relevant group. Unlike proceedings before the Board, therefore, membership of the Tribunal, when making potentially restrictive decisions, will generally be balanced between registered and non-registered persons. Therefore any potential to restrict competition is minimal.

However, in order to reflect the additional classes of registrants, the Panel recommends that the membership of the Tribunal include a member of each group of paradecimal professional and that in proceedings against a particular group, that group's member be included in the constitution of the Tribunal.

Recommendations:

29. The membership of the Tribunal should include, in addition to the current members, one dental therapist and one dental technician.
30. In proceedings against a paradecimal professional, the Tribunal should be constituted of at least the chairman and two other members of whom one should be a member of the respective paradecimal professional group.

The existence of an independent Tribunal to determine serious matters of unprofessional conduct is a safeguard against restrictive decisions by the Board. In general the other health professions in South Australia are regulated wholly by the respective Board. However, in New South Wales, for example, there is even greater independence, due to the existence of a disciplinary Tribunal for all health professions (namely, the Health Care Complaints Commission).

2.5.3 The Clinical Dental Technicians Registration Committee

Section 29 establishes the Clinical Dental Technicians Registration Committee ("the Committee"), which determines applications for registration or reinstatement of registration of clinical dental technicians⁶¹. The membership of the Committee is currently:

- (a) one legal practitioner;
- (b) one consumer representative;
- (c) one dentist; and
- (d) two representatives of clinical dental technicians.

Similarly, the Committee has the potential to make decisions that may restrict competition by restricting entry to the market for clinical dental technician services. Therefore similar considerations as those in relation to the Board need to be applied when addressing the issue of public benefit versus costs. The Committee is subject to the same legislative safeguards as the Board, including the appeal process under section 75.

The Review Panel considers that there is minimal potential for the Committee to make restrictive decisions, other than the mere fact that there is no such committee for the other registered paradecimal professional, hence leading to potential discrimination between market participants.

⁶¹ sub-section 41(3)

Therefore, the Review Panel initially considered that the Committee should be representative of all parodontal professionals and should have a greater role in the administration of the Act.

However, upon the completion of the second consultation phase and with regard to the submissions⁶², the Review Panel has decided that there is now no need to legislate for such a Committee at all. Historically, the Committee was established to give clinical dental technicians an input into the registration decisions of the Board. However, with a representative on the Board, the Panel believes that this need no longer exists. Retaining the Committee incurs unnecessary costs of administration, which may be passed on to the public.

The Review Panel does however acknowledge the importance of input from all parodontal professionals. There is nothing preventing the Board from establishing a committee in any event if it believes it to be necessary.

Recommendations:

31. The requirement for a Clinical Dental Technicians Registration Committee, along with all references to the Committee, should be removed.

2.5.4 Legislative safeguards

Procedure and Natural Justice

Provisions regulating the procedures of the Board, Tribunal and Committee (sections 8 & 30) and the disclosure of interests of members (sections 10, 27 & 32) are legislative safeguards upon the use of the powers of the Board to restrict competition.

However, the most important safeguards are sections 66 and 70 which require that natural justice be afforded to parties to a proceeding before the Board or the Tribunal.

Appeals mechanism

Section 75 of the Act enables appeals to the Supreme Court against decisions of the Board (including the Committee) and the Tribunal concerning registration, the imposition of conditions of practice, reprimands and orders.

The powers of the Supreme Court in relation to an appeal from a decision of the Board or the Tribunal are set out in section 75(3). These powers are to:

- (a) affirm, vary or quash the decision, reprimand or order against which the appeal has been instituted and make any consequential or other order that may be just in the circumstances;
- (b) remit the subject matter of the appeal to the Board or the Tribunal (as the case may be) for further hearing or consideration or for rehearing;

⁶² in particular the Dental Board of SA (February 1999) submission and SADS (15/2/99) submission

- (c) make any order as to costs.

The Review Panel acknowledges that an appeal to the Supreme Court may be a costly and time consuming exercise, therefore inaccessible to some prospective appellants and hence limiting the protection provided. The only alternative within the current system is an appeal to the District Court, Administrative and Disciplinary Division, whereby some cost and time benefit could be achieved.

Most other States have combined health tribunals with varying functions, such as the New South Wales Health Care Complaints Commission. However in most cases, that system operates in parallel to the specific disciplinary body and there is no appeal from the disciplinary body to the combined Tribunal. Such a system does, however, assist in providing greater transparency of decisions and accessibility to the consumer.

In these circumstances, the Review Panel considers the current appeals mechanism to provide adequate protection, subject to the appeals body being the District Court rather than the Supreme Court. In addition, the Panel supports the principle of a combined administrative appeals body to deal with appeals under the Act.

Recommendations:

32. References to the Supreme Court in the Act should be amended to “the Administrative and Disciplinary Division of the District Court”.

Other Safeguards

As discussed above, the Board exercises discretionary functions in a number of situations, such as approving and recognising courses, deciding on whether a person is “fit and proper” to be registered or a person is “incompetent”, “incapacitated” or is guilty of “unprofessional conduct”. In relation to unprofessional conduct decisions, the Board has prepared a Code of Ethics to explain its decision making procedure⁶³. The Review Panel believes that a similar set of guidelines in relation to all discretionary decisions would assist in promoting objective criteria and hence transparency of the Board’s decisions. This should not be a legislative requirement at this stage.

Recommendations:

33. The Board should publish and make available to the public and the profession guidelines on:
- (a) Registration and reregistration criteria;
 - (b) Recommending, approving and recognising training courses; and
 - (c) Criteria for determining incompetence and incapacity.

The Review Panel considers that the above legislative safeguards, subject to the recommendations, are sufficient to protect the public. The submissions received support this conclusion.

⁶³ part 2.4

PART 3: ADMINISTRATIVE REQUIREMENTS

The Review Panel was required during the course of this review to examine the provisions of the Act which impose administrative obligations upon persons and determine whether these obligations are unnecessary or impose an unwarranted burden. The provisions of the Act which impose administrative requirements are:

- Section 20** The Board must keep proper accounts of its financial affairs and these shall be audited at least once a year.
- Section 21** The Board must prepare and deliver to the Minister, on or before 30 September, an annual report detailing the administration of the Act and containing the audited accounts.
- Section 45** The requirement to obtain the Board's approval of a company's memorandum and articles of association.
- Section 46** Companies must lodge an annual return containing specified information with the Board. The required form is contained in the First Schedule to the regulations.
- Section 51** The requirement to obtain the Board's approval to alter a company's memorandum or articles of association.
- Section 58** The Board may require a registered person to supply it with prescribed information in relation to that person's employment and practice of dentistry. This information is prescribed in regulation 18.
- Section 61** Medical practitioners are required to report unfitness of a registered person. The information to be included in such report is contained in regulation 19.
- Section 80** Where a registered person has been ordered to pay compensation or has agreed to pay a sum of money in relation to a negligence claim, that person must provide the Board with information in relation to the claim. The information is prescribed in regulation 20.

There were no submissions received which argued that any of the above administrative requirements imposed an unwarranted burden on any person.

The Review Panel notes that the removal of ownership restrictions will include the removal of sections 45, 46 and 51 and therefore does not need to consider these sections.

Sections 20 and 21 are common provisions and are necessary to ensure accountability of the Board. The burden on the Board is not significant, as it is usual business practice to keep accounts of financial affairs.

Section 58 is necessary for the Board to maintain accurate records of registered persons and to ensure competence. This section will be even more important upon the removal of the ownership restrictions, where there is accountability of unregistered persons as employers of registered persons. The burden on the registered person to provide this information is minimal.

Section 61 is common to the health professions and is necessary to enable the Board to enforce section 60, where a registered person may be mentally or physically unfit to practise dentistry. The burden on the medical practitioner is to forward the required information,

which is not significant.

Section 80 is necessary to assist the Board to investigate possible unprofessional conduct. The burden on the registered person is insignificant as this information should be readily available.

Accordingly, in relation to these provisions, the Review Panel concludes that that there are no administrative procedures under the Act and regulations which are unnecessary or impose an unwarranted burden on any person.

PART 4: CONCLUSION

4.1 Conclusions

Restrictions

The provisions relating to registration, reservation of practice and title, scope of practice, disciplinary actions and ownership restrictions in the *Dentists Act* establish and maintain the system of practice protection. This system contains significant restrictions on entry to the dental profession and conduct within the profession. The most significant are the specific provisions relating to the practice protection regime which restrict entry to the dental profession to appropriately qualified persons. This is a serious restriction. There are also restrictions upon the conduct of registered persons in the practice of dentistry, such as the restrictions on clinical dental technicians. There are also restrictions on the conduct of dentistry as a business, such as the ownership and advertising restrictions.

Public Benefits

The system of practice protection established by the *Dentists Act* achieves significant public benefit. The public benefit conferred by the Act is the protection of the public from potential harm by incompetent dental care providers. It provides the public with confidence that registered dental care providers have appropriate qualifications and with information about a particular dental care provider's qualifications, expertise, and the results of any Board or Tribunal actions against the provider.

Costs

The two categories of cost, as referred to in part 1.4, arise in the case of the restrictions contained in the *Dentists Act*. Restricting the numbers of dental care providers does cause a shortage of appropriately trained dental care providers in some areas, such as rural areas. It also causes the cost of such services to be higher than in an unrestricted system.

Compliance costs under the *Dentists Act* are generally minimal, because they are such a small percentage of the total expenditure of a dental practice. However compliance costs of obtaining the necessary qualifications are more significant.

Subject to the recommendations listed below, the Review Panel assesses that the public benefit of the restrictions contained in the *Dentists Act* outweighs the costs of the restrictions.

Alternatives

The objectives of these restrictions is, in summary, to protect the public. The Review Panel has considered the alternatives to the legislative restrictions on competition to achieve these objectives.

Such alternatives are:

1. Consumer protection legislation such as the *Trade Practices Act* and the *Fair Trading Act*;
2. Protection under the common law, such as claims in negligence, breach of contract and misrepresentation;
3. Public health legislation, such as the *Public and Environmental Health Act 1987* and the *Controlled Substances Act 1984*;
4. Self - regulation;
5. Corporations Law.

The Review Panel have concluded that these alternatives are not sufficient to protect the public and that therefore the objectives of the Act cannot be achieved, at this time, by means other than legislative restrictions on the dental profession.

4.2 Recommendations

On the basis of the analysis set out in this report the Review Panel recommends:

Legislative Changes

1. The objects section of the Act should be amended to state “An Act to protect the public by providing for the registration of dentists,.....”.
2. The name of the Act should be changed to the “Dental Act”.
3. There should be an appeal from decisions of the Board in relation to approving or recognising courses of qualifications for registration.
4. The requirement in section 52(3) that a person may not apply for reinstatement for 2 years should be replaced with a requirement that the Board, upon cancelling a person’s registration for unprofessional conduct, must specify a period of time that must elapse prior to that person applying for reinstatement. Such period should be not less than 12 months.
5. The restriction that dental specialists may only provide dental treatment in their registered branch of specialty, contained in sub-sections 40(3) & (4), should be removed.
6. The restriction on clinical dental technicians making partial dentures, contained in sub-section 41(2)(a), should be removed.
7. References in the Act to “clinical dental technician” should be changed to “dental prosthetist” except that section 36 should prohibit the illegal holding out as a “clinical dental technician” as well as a “dental prosthetist”.

9. There should be a requirement that dental therapists be registered.
10. The criteria for registration as a dental therapist and disciplinary and competency procedures should be the same as for the other registered dental care providers.
11. Dental therapists should be permitted to practise dentistry with no restrictions on employment.
12. The restriction preventing dental therapists from working on adults should be removed once competence to do so is able to be demonstrated. For this purpose, the Board should report to the Minister as to the training or other requirements that in the Board opinion are necessary to ensure such competence.
13. Dental therapists should be only permitted to practise dentistry under the control of a dentist.
14. The holding out provisions of the Act be amended to also apply to the titles “dental prosthetist”, “dental therapist” and “dental technician”.
15. The Act should include provisions for the registration of dental technicians.
16. The criteria for registration as a dental technician and disciplinary and competency procedures should be the same as for the other registered dental care providers.
17. Section 78 should be proclaimed provided that the appropriate level of indemnity cover is available.
18. All ownership restrictions, direct and indirect, contained in the Act should be removed.
19. It should be an offence for an employer to unduly influence an employee to perform dentistry in a manner detrimental to the welfare of the consumer.
20. The Board should have the power to enter premises for the purpose of inspecting those premises, if such premises are the subject of a complaint before the Board. Failure to allow the Board to enter premises should be an offence.
21. The restriction contained in sub-section 38(1)(a), namely that a registered person provide dental treatment personally, be removed.
22. Regulation 14 should be removed.
23. The definition of “unprofessional conduct” should be amended to include “conduct in contravention of the Code of Conduct as approved by the Minister from time to time”.
24. The functions of the Board should include making recommendations to the Minister in relation to a Code of Conduct.
26. The words “the highest” should be removed from sub-section 12(1).
27. Sub-section 12(1) should read “The Board shall exercise its functions with a view to *protecting the public* by achieving and maintaining *appropriate* professional

standards.....”

28. The membership of the Board should be:
 - (a) five dentists - two elected by a majority of dentists, two nominated by the Minister and one nominated by the Council of the University of Adelaide;
 - (b) one representative of dental prosthetists and dental technicians nominated by the Minister;
 - (c) one dental therapist nominated by the Minister;
 - (d) one dental hygienist nominated by the Minister;
 - (e) one legal practitioner nominated by the Minister; and
 - (f) two consumer representatives nominated by the Minister upon advice from consumer groups including the South Australian Consumer Representatives Network.
29. The membership of the Tribunal should include, in addition to the current members, one dental therapist and one dental technician.
30. In proceedings against a parodontal professional, the Board should be constituted of at least the chairman and two other members of whom one should be a member of the respective parodontal professional group.
31. The requirement for a Clinical Dental Technicians Registration Committee, along with all references thereto, should be removed.
32. References to the Supreme Court in the Act should be amended to “the Administrative and Disciplinary Division of the District Court”.

Procedural Changes

8. Persons currently registered as clinical dental technicians should be required to demonstrate competence in working in mouths containing natural teeth, dental implants or parts thereof, in order to obtain full registration as a dental prosthetist. For this purpose, the Board should report to the Minister as to the training or other requirements that in the Board opinion is necessary to ensure such competence. In the absence of such demonstration, person should be granted conditional registration as a dental prosthetist, subject to that persons current registration and competence.
25. Any Code of Conduct containing advertising restrictions should not be approved
33. The Board should publish and make available to the public and the profession guidelines on:
 - (a) Registration and reregistration Criteria;
 - (b) Recommending, approving and recognising training courses; and
 - (c) Criteria for determining incompetence and incapacity.





PART 5: APPENDICES

APPENDIX 1

TERMS OF REFERENCE

SUMMARY

Under the Competition Principles Agreement, in relation to legislation that contain restrictions upon competition, the Government of South Australia is required to show evidence that:

- a) the benefits of any restriction to the community outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.

The *Dentists Act 1984* will be examined during the legislative review in accordance with the obligations contained in Clause 5 of the Agreement. Regulations enacted under the *Dentists Act 1984* will be examined concurrently.

REVIEW PANEL

Richard Deyell: Department of Human Services (Chair)

Keith Cropley

Jane Richards: Solicitor, Competition Policy Review Team

OBJECTIVES OF THE REVIEW

When considering the appropriate form of regulation the Review Panel will attempt to achieve the following objectives:

1. Regulation should only be retained where the benefits to the community as a whole outweigh the costs: and if the objectives of the regulation cannot be achieved more efficiently through other means, including non-legislative approaches.
2. Pursuant to Clause 1 (3) of the Agreement, in assessing the benefits of the regulation regard shall be had, where relevant, to:
 - effects on the environment
 - social welfare and equity
 - occupational health and safety
 - economic & regional development
 - consumer interests, the competitiveness of business including small business
 - efficient resource allocation
3. Compliance costs and the administrative burden on small business should be reduced where feasible.

ISSUES TO BE ADDRESSED

1. Clarify the objectives of the *Dentists Act 1984*, including the identification of the public benefit of the Act, and provide assessment of the importance of these objectives to the community.
2. Identify restrictions to competition contained in the Act, regulations made under the Act, and any relevant Codes of Practice:
 - 2.1 describe the theoretical nature of each restriction (eg: barrier to entry, restriction to competitive conduct within the market, discrimination between market participants)
 - 2.2 identify the markets upon which each restriction impacts
 - 2.3 provide initial categorisation of each restriction (ie: trivial, intermediate or serious)
3. Analyse and describe the likely effects of these restrictions on competition in the relevant markets and on the economy generally:
 - 3.1 what are the practical effects of each restriction on the market ?
 - 3.2 assign a weighting to the effect of each restriction in the market
 - 3.3 assess what is the relative importance of each restriction in a particular market to the economy as a whole
4. Assess and balance the costs and the benefits of the restriction.
5. Where the restriction is justifiable on the basis of public benefit, consider whether there are practical alternative means for achieving the objectives of the *Dentists Act 1984*, including non-legislative approaches.
6. Consider whether any licensing, reporting or other administrative procedures are unnecessary or impose a burden on any person.

CONSULTATION

The Review Panel will review submissions received in the consultation process undertaken within the prescribed period. A list of Key Interest Groups will be compiled and provided with a copy of the Draft Review Panel Report for comment.

REPORT

The Report to the Minister will contain:

- Terms of Reference of the review
- Persons and groups consulted
- Analysis and recommendations

APPENDIX 2

SA DENTISTRY AND ITS WORKFORCE - COMPARISON OF ROLES AND SCOPE OF PRACTICE, JANUARY 1999

	DENTAL TECH	CLINICAL DENTAL TECH
TRAINING	Associate diploma course - TAFE. Two years full time with 1 day per week in private lab. Third year full time in private lab.	No registration course has ever been conducted in SA advanced Training must be obtained from interstate.
REGISTRATION	Not registered	Registered
FIELD OF PRACTICE	planning, design, fabrication and adjustment of dental prostheses, and faciomaxillary appliances	planning, design, fabrication and adjustment and fitting of dental prostheses, and faciomaxillary appliances
SCOPE OF PRACTICE	<p>Appliances are manufactured by the technician and fitted by dentists, dental prosthetists and faciomaxillary surgeons</p> <p>planning for the construction of prosthetics designing individual prostheses from prescription fabrication of prosthetics adjustment to existing prosthetics fitting of prosthetics to a patient's mouth</p>	<p>Act, Part 1 (4) restricts the CDT to working "where there are no natural teeth", "jaws, gums & proximate are not abnormal, diseased..."</p> <p><i>do not need a prescription or order for dentist</i></p> <p><i>see comment above</i></p>



core practice

not listed in core practices

	DENTAL THERAPISTS	DENTAL HYGIENISTS	DENTAL ASSISTANTS
TRAINING	Prescribed in the Act, Part 6, no 85. (qual & exp determined by the Minister) Diploma , 2 year tertiary	Prescribed in the Regs, 11 &12 Diploma, 2 year TAFE	Not prescribed ADA course available
REGISTRATION	not registered	registered	not registered
FIELD OF PRACTICE	SADS	Not restricted	Not restricted
SCOPE OF PRACTICE	<p><i>defined by SADS & training</i></p> <p>RESTRICTED to the treatment of children</p> <p>Plan & instigate care with reference to a dentist after initial consultation as necessary</p> <p>dental health education dental prophylaxis application of fluoride application of rubber dam application of fissure sealants</p> <p>taking of impressions dental radiography Interpret bite-wing radiographs recording and diagnosing of dental caries and the planning and instigation of treatment administration of local anaesthetics restricted to some types polishing of restorations mummification treatments of pos. deciduous teeth test & record vitality of teeth in consultation with a dentist extraction of prim. teeth fabrication and fitting of mouth-guards clinical management role including records, stores and equipment orthodontic band selection, removal of archwires, bands & attachments</p>	<p><i>defined in Regulations under the Act</i></p> <p>Act according to a plan provided by a dentist, supervised by a dentist who is on the premises</p>	<p><i>defined by employer and competence</i></p> <p>Act under the supervision of a dentist, instructed by a dentists</p>
	specific restrictions	specific restrictions	specific restrictions

application & rem of
periodontal packs
chair side assisting



core practice
not listed in core practices

APPENDIX 3**SUMMARY OF VICTORIAN RECOMMENDATIONS⁶⁴**

1. That existing legislation and associated Regulations be repealed and replaced with a single Dental Practice Act for the dental profession in its entirety.
2. That the purpose and objectives of the new Act be to promote the community's access to dental care and to minimise the community's exposure to the health risks in dentistry.
3. That dentists, dental specialists, dental prosthetists and dental auxiliaries be registered in divisions reflecting their qualifications.
4. That the titles registered dentist, dental surgeon, dental practitioner, dental specialist, dental auxiliary, dental prosthetist and advanced dental technician be reserved for registered persons only.
5. That the maximum appropriate penalty be available against unregistered persons who: use protected titles or other titles to induce a belief of registration; claim to be registered; hold themselves out as registered; carry out an act required to be carried out by a registered person; or claim to be qualified to practise dentistry.
6. That there be title protection for educational institutions approved by the Board.
7. That "dentistry" be defined as "includes the diagnosis of condition of the mouth and/or the performance of any invasive and/or irreversible procedure upon the natural teeth and/or associated parts for a person, and the construction and/or intraoral adjustment of artificial teeth or appliances for a person" in the new Act.
8. That all registered persons practise dentistry in accordance with competencies determined by the Board.
9. That there be the maximum appropriate penalty available against unregistered persons who practise dentistry.
10. That there be no direct or implied legislative restrictions on dental practice or laboratory ownership.
11. That it be an offence under the new Act for an employer to unduly influence an employee to perform dentistry in a manner detrimental to the welfare of the consumer.
12. That false, deceptive or misleading advertising be an offence under the new Act.
13. That the restrictive one-to-one ratio for the dental hygienist to dentist be removed from the Regulations.

⁶⁴ Victorian Department of Human Services *Review of Dentists Act 1972 and Dental Technicians Act 1972, Final Report*, (July 1998)

14. That the requirement for dental auxiliaries (dental hygienist) to work under the supervision of a dentist be retained in the Regulations until evidence based on sound clinical research shows that removing the requirement will not endanger public health and safety.
15. That the public sector employment restriction on dental therapists be removed from legislation.
16. That the current practice which restricts dental therapists to treating person under 17 years and under be continued until evidence based on sound clinical research shows that removing the requirement will not endanger public health and safety.
17. That the requirement for dental auxiliaries (dental therapists) to work under the supervision of a dentist be retained in the Regulations until evidence based on sound clinical research shows that removing the requirement will not endanger public health and safety.
18. That the restriction requiring an oral health certificate be repealed after 12 months unless there is clinical evidence that its repeal will endanger public health and safety.
19. That a Dental Practice Board be established to promote access to dental care and to regulate dental professionals for the protection of the public.
20. That the Victorian health practitioner model for registration be adopted as described.
21. That the Victorian health practitioner model for unprofessional conduct be adopted as described.
22. That the Victorian health practitioner model for impaired providers be adopted as described.

APPENDIX 4**COMPARISON OF REGISTRATION FEES - DENTISTS**

Jurisdiction	Registration fee	Annual practice fee
South Australia	\$60	\$240
New South Wales	\$100	\$100
Victoria	\$127.50	\$127.50
Tasmania	\$100	\$100
Queensland	\$142	\$102
Australian Capital Territory	\$145	\$125
Northern Territory	\$180	\$100
Western Australia	\$50	\$150

APPENDIX 5**PUBLIC HEALTH RISKS & EXISTING REGULATION⁶⁵**

The major public health risks in dentistry are summarised below

Risk Category	Health Risk	Persons at Risk
Infection	Infectious diseases eg hepatitis, HIV, tuberculosis	General public Consumer Providers: <ul style="list-style-type: none"> • Dentists • Dental hygienist • Dental Therapist • Dental assistant • Clinical dental technician • dental technician
Radiation	Somatic effects eg cancer Genetic effects eg birth defects	Consumer Providers: <ul style="list-style-type: none"> • Dentist • Dental hygienist • Dental Therapist • Dental assistant
Drugs	Access to restricted substances for inappropriate personal use or illegal dentistry	General public Providers: <ul style="list-style-type: none"> • Dentist • Dental hygienist • dental therapist • Dental assistant
Behaviour	Post traumatic stress or any other adverse psychological outcomes	Consumer
Competence	Morbidity, mortality Adverse dental outcomes	Consumer

⁶⁵ from Australian Dental Association (SA Branch) submission at 32

APPENDIX 6**MATERIAL CONSIDERED BY REVIEW PANEL**

- Australian Council of Professions *National Competition Policy and the Professions* (1997)
- Australian Health Minister's Advisory Council *Final Report of the Working Group Advising on Regulatory Requirements for Unregistered Health Occupations* (20 February 1997)
- Dental Board of South Australia *Code of Ethics* (June 1998)
- Hansard *Dentists Bill Second Reading Speech* (8 May 1984)
- Health Department of Western Australia *Discussion Paper - Review of Western Australian Health Practitioner Legislation* (October 1998)
- National Competition Council *Considering the Public Interest under the National Competition Policy* (November 1996)
- Pew Health Professions Commission, Report for the Taskforce on Health Care Workforce Regulation *Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century* (US, December 1995)
- Queensland Health *Review of Medical and Health Practitioner Registration Acts* (September 1996)
- Victorian Department of Human Services *Review of Dentists Act 1972 and Dental Technicians Act 1972, Final Report*, (July 1998)
- Job Guide Online <http://jobguide.deet.gov.au/JobGuideOnline/Text/Jobs/>

Submissions

- Academy of Australian & New Zealand Prosthodontists (1 November 1998)
- Academy of Australian & New Zealand Prosthodontists (11 February 1999)
- Tim Souter, Alliance Dental Laboratories Pty Ltd (undated)
- Australian Commercial Dental Laboratories Association Inc (20 October 1998)
- Australian Commercial Dental Laboratories Association Inc (11 February 1999)
- Australian Dental Association (SA Branch) Inc (August 1998)
- Australian Dental Association (SA Branch) Inc (30 October 1998)
- Australian Dental Association (SA Branch) Inc (12 February 1999)
- Australian Prosthodontic Society (SA Branch) (2 November 1998)
- Council On The Ageing (4 November 1998)
- Dental Technicians & Dental Prosthetists Society of SA Inc (October 1998)
- Dental Technicians & Dental Prosthetists Society of SA Inc (11 February 1999)
- Don Schrapel (21 October 1998)
- South Australian Dental Service (undated)
- South Australian Dental Service (15 February 1999)
- South Australian Dental Therapists Association Inc (October 1998)

- South Australian Dental Therapists Association Inc (February 1999)
- Neil Sullivan, Sullivan Dental Laboratory Pty Ltd (31 October 1998)
- Neil Sullivan, Sullivan Dental Laboratory Pty Ltd (11 February 1999)
- The Dental Hygienists Association of Australia (SA Branch) Inc (October 1998)
- The Dental Hygienists Association of Australia (SA Branch) Inc (11 February 1999)
- The Dental Board of South Australia (October 1998)
- The Dental Board of South Australia (February 1999)

APPENDIX 7**CONSULTATION LIST**

Clinical Dental Technicians and Dental Prosthetists Assoc. of SA Inc Neville Spencer PO Box 206 ALDGATE SA 5154	Dental Therapists Assoc. of SA Inc Leslie Nitschke C/ SA Dental Hospital Frome Road ADELAIDE SA 5000
Royal Australian College of Dental Surgeons Paul Sambrook 1 Hutt Street ADELAIDE SA 5001	Australian Dental Association (SA Branch) Inc Executive Officer, Mr Robert Grima 2 /62 King William Road GOODWOOD SA 5034
Australian Commercial Laboratories Assoc. 45 Grenfell Street ADELAIDE SA 5000	Dental Hygienists' Assoc of Aust (SA Branch) Inc. President, Ms Marilyn Jolly PO Box 296 ADELAIDE SA 5001
Chief Executive Officer South Australian Dental Service Frome Road ADELAIDE SA 5000	President: Dental Board of SA 59 Fullarton Road KENT TOWN SA 5067
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A further 15 Issues Papers were requested