

## Response from ACT Dental Board to:

CONSULTATION PAPER  
Other matters for inclusion in Bill B

**Proposal 3.5.1:** It is proposed that the second stage legislation provide a broad delegation power (as in Clause 46 of the National Law Bill), that would allow a national board to delegate any of its functions, including all of the key decisions listed above, to committees of the board or to staff or other persons, other than the power of delegation. Under such an arrangement, a board would have the discretion to determine the constraints or boundaries placed on any delegation, as well as the number and make up of any committees it requires in order to make key decisions listed above.

**Proposal 3.5.1:** Supported

**Proposal 3.5.2:** It is proposed that the only statutory committees in the new scheme would be panels convened for the purposes of hearing individual matters (health, performance or conduct).

**Proposal 3.5.2:** Supported

**Proposal 3.5.3:** It is proposed that the legislation require a minimum of three members on a panel for the purposes of statutory decision-making with at least 50 per cent and no more than two thirds of the members being registrants from the profession concerned and at last one member being a community member.

**Proposal 3.5.3:** Supported

**Proposal 3.5.4:** It is proposed that the legislation provide that a panel should not include any person who was a member of the board or committee that took the decision to refer the matter to the panel.

**Proposal 3.5.4:** Supported

**Proposal 3.5.5:** It is proposed that where a board establishes any committee other than a statutory committee or panel that the composition is not prescribed in legislation but rather is a matter for the board to determine in line with any directions from Ministerial Council.

**Proposal 3.5.5:** Supported

**Proposal 3.6.1:** It is proposed that the legislation provide for safeguards relating to the delegation of board powers as follows:

- a delegation must be in writing and specify the person or persons to whom the delegation made, the decision or decisions that may be taken under delegation, and the period to which the delegation relates, as well as any conditions the board has attached to the exercise of the decision making under delegation, and include the ability to rescind a delegation
- a right of review for a person whose interests are affected by a decision made under delegation similar to the rights of review against decisions of the board itself (with powers for the board to delegate the conduct of such a review)
- a statutory limit on the length of time a practitioner's registration may be suspended without review by the board (or delegate of the board)
- a right of review for key registration and panel hearing decisions, as outlined in section 10 of the complaints consultation paper, to the relevant State or Territory tribunal for decision
- general and specific provisions with respect to conflicts of interest that require a person to exclude themselves from decision-making in the event of a conflict, including, for example, where a small number of practitioners operate in a single geographical area, and
- general provisions with respect to procedural fairness, such as separation of powers between original decision making and review of decisions.

**Proposal 3.6.1:** Supported

**Proposal 4.1.1:** With respect to advisory committees, it is proposed that the legislation, while providing powers for boards to establish such committees, would be silent on the process through which a board might select members of its advisory committees. This would afford a board maximum flexibility to determine their terms of appointment.

With respect to committees established by boards for the purposes of decision making under delegation from the boards, there are three options:

- Option 1:** The legislation empowers boards to appoint persons to such committees in accordance with a process approved by the Ministerial Council. The Ministerial Council process requires:
- an open and transparent process where nominations are sought publicly from individuals and professional bodies

- minimum membership requirements for any committee delegated decision making, to ensure a balance of registrant and non-registrant members, and
- appointments for periods of up to three years.

**Option 2:** As for Option 1, except that the Ministerial Council's approved process would include a nominee of the Ministerial Council on selection panels, with that nominee not having a right of veto.

**Option 3:** The legislation makes provision for any person appointed by a board to a committee delegated key decision making to be drawn from a list of persons approved by the Ministerial Council.

**Proposal 4.1.1:** Option 1 Supported

**Proposal 4.1.2:** The stakeholders are asked to advise of their preferred option for appointments to committees to which board powers are delegated.

**Proposal 4.1.2:** Option 3 Supported

**Proposal 4.1.3:** Stakeholders are requested to advise of their preferred option for appointments to statutory hearing panels.

**Proposal 4.1.3:** Option 3 Supported

Interface	Proposed approach
<p><i>Freedom of information</i></p>	<p><b>Proposal 5.2.1:</b> With respect to freedom of information, it is proposed that the Commonwealth <i>Freedom of Information Act</i> apply (<b>Option 1</b>).</p>
	<p><b>Proposal 5.2.1:</b> Option 1</p>

Interface	Proposed approach
<b>Privacy &amp; confidentiality</b>	<b>Proposal 5.2.2:</b> With respect to confidentiality and lawful disclosure, it is proposed that tailor made provisions along the lines of Clause 53 of the National Law Bill be included in the second stage legislation ( <b>Option 4</b> ).
	<b>Proposal 5.2.2:</b> Option 4 Supported
	<b>Proposal 5.2.3:</b> With respect to the application of a privacy regime, it is proposed that the existing Commonwealth private sector privacy regime and the National Privacy Principles apply, and are incorporated by reference into the national scheme legislation ( <b>Option 1</b> ).
	<b>Proposal 5.2.3:</b> Option 1 Supported
<b>Ombudsman legislation</b>	<b>Proposal 5.2.4:</b> With respect to ombudsman legislation, it is proposed that the <i>Commonwealth Ombudsman Act 1976</i> apply ( <b>Option 1</b> ).
	<b>Proposal 5.2.4:</b> Option 1 Supported
<b>Financial accountability legislation</b>	<b>Proposal 5.2.5:</b> With respect to financial accountability, it is proposed that tailor made provisions be included in the second stage legislation ( <b>Option 4</b> ).
	<b>Proposal 5.2.5:</b> Option 4 Supported
<b>Public sector administration legislation</b>	<b>Proposal 5.2.6:</b> With respect to the employment arrangements and accountability of staff and board members under the scheme, it is proposed that tailor made provisions be included in the second stage legislation ( <b>Option 4</b> ).
	<b>Proposal 5.2.6:</b> Option 4 Supported
<b>Statutory interpretation legislation</b>	<b>Proposal 5.2.7:</b> With respect to statutory interpretation, it is proposed that tailor made provisions be included in the second stage legislation ( <b>Option 4</b> ).
	<b>Proposal 5.2.7:</b> Option 4 Supported

Interface	Proposed approach
<b>Warrant powers</b>	<b>Proposal 5.2.8:</b> With respect to warrant powers, it is proposed that the national scheme legislation require application for a warrant to be made via existing State and Territory legislation ( <b>Option 2</b> ).
	<b>Proposal 5.2.8:</b> Option 2 Supported
<b>Working with children checks legislation</b>	<b>Proposal 5.2.9:</b> With respect to working with children legislation, it is proposed that existing State and Territory legislation, where it exists, continues to apply ( <b>Option 2</b> ).
	<b>Proposal 5.2.9:</b> Option 2 Qualified Supported – As a principle all Australian children should be subject to the same protection measures not withstanding in which State or Territory they reside. It is anticipated that the National Framework for Protecting Australia’s Children will be released in early 2009. COAG noted that all jurisdictions, with the exception of Victoria and the Australian Capital Territory, would exchange information on non-conviction charges for screening of people working with children. It should be noted that discrepancies currently exist between States and Territories in regard to working with children clearances. Uniformity of legislation amongst States and Territories legislation should be sought
<b>Special events legislation</b>	<b>Proposal 5.2.10:</b> With respect to special events legislation, it is proposed that existing State and Territory legislation, where it exists, continues to apply ( <b>Option 2</b> ).
	<b>Proposal 5.2.10:</b> Option 2 Supported

**Proposal 6.1:** It is proposed that the national scheme legislation and any consequential amendments be framed in a way that allows for the Trans-Tasman Mutual Recognition Principle, and preserves the linkages between Australian and New Zealand regulatory authorities and supports joint standard setting and accreditation

**Proposal 6.1** Supported