



Australian
Dental
Council

SUBMISSION

on

NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR THE HEALTH PROFESSIONS

Consultation on Other Matters for Inclusion in Bill B

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1. Introduction

1.1 The Australian Dental Council appreciates the invitation of the Practitioner Regulation Subcommittee of the AHMAC Health Workforce Principal Committee to comment on matters that are set out in the consultation paper (issued 12 November 2008) on other matters to be included in the second stage of legislation to establish a National Registration and Accreditation Scheme for the Health Professions.

1.2 The Australian Dental Council (ADC) was formed in 1993. Membership of the ADC comprises the following bodies associated with the standards of education and training and regulation of professional practice for dentists, dental specialists, dental therapists and oral health therapists, and dental hygienists in Australia:

- (a) the Dental Boards of the States and Territories of Australia
- (b) the Australasian Council of Dental Schools
- (c) the Australian Dental Association Inc
- (d) the Royal Australasian College of Dental Surgeons
- (e) the Australian Dental and Oral Health Therapists Association
- (f) the Dental Hygienists Association of Australia

In addition, the Dental Council of New Zealand and the Council of Regulatory Authorities for Dental Technicians and Dental Prosthetists Australia and New Zealand Inc (CORA) have Observer status on the ADC Board. The ADC is governed by a Board of Directors comprising nominees of the above member bodies, together with the officebearers and Chairs of standing committees.

1.3 The principal functions of the ADC are:

- (a) to advise and make recommendations to Australian State and Territory Dental Boards in relation to:
 - the accreditation of education courses leading to a registrable dental or oral health qualification, conducted by Australian dental schools and other recognised institutions
 - the assessment of the suitability for practice in Australia of persons with overseas dental qualifications, and
 - uniform criteria for recognition of qualifications for registration and standards of practice
- (b) to provide advice on matters concerning the occupational regulation of dentists, including general and specialist registration, and of professions allied to dentistry
- (c) to undertake certification of other education courses that do not lead to a registrable dental or oral health qualification, conducted by Australian dental schools and other appropriate institutions.

1.4 The ADC has consulted with the following stakeholder groups in the compilation of this submission:

- State/Territory Dental Boards.
- Australasian Council of Dental Schools
- Australian Dental Association Inc
- Australian Dental and Oral Health Therapists' Association Inc
- Australian Dental Prosthetists' Association
- College of Dental Technicians of the Oral Health Professionals Association
- Council of Regulating Authorities for Dental Technicians and Dental Prosthetists Australia and New Zealand Inc
- Dental Hygienists' Association of Australia Inc

Not all groups have been able to respond to the issues canvassed in the consultation paper. The Australian Dental Association Inc (ADA Inc) is forwarding a separate submission.

For ease of reference this Submission uses numbering which follows the numbering of the Consultation Paper. Only paragraphs on which comments are made have been reproduced in this Submission (hence the numbering is incomplete). Comments are in ***bold italics*** following the relevant extract from the Consultation Paper. In general, absence of comment recorded against a proposal indicates agreement.

2. Comments on Specific Issues

*(using numbering which follows the numbering of the Consultation Paper; only paragraphs on which comments are made have been reproduced (hence the numbering is incomplete). Comments are in **bold italics** following the relevant extract from the Consultation Paper.)*

3 Delegation powers of national boards

To ensure timely and responsive decision making, it will be important for the second stage legislation to provide the flexibility for decisions to be taken, at the discretion of a national board, at either the national level (by the board itself or a committee of the board) or at a regional or State or Territory level, and by a range of persons. It is also important that the delegation arrangements provide for sufficient transparency and accountability in decision making including the right of review of delegated decisions. (p5)

Submission of the ADC:

The ADC endorses the proposed approach for her second states legislation to ensure timely and responsive decision-making by providing maximum flexibility for the national board's to have discretionary power to determine the appropriate level and the body to make decisions. The ADC also agrees that such delegations by boards should provide for transparency and accountability in decision-making, but emphasises the need to ensure the right of review of delegated decisions is not unreasonably burdensome and entail the potential to cause significant delays and inefficiencies in the system without commensurate benefit in public protection.

Second, the ten professions that will be part of the scheme when it commences differ both in the size and the complexity of their operational requirements. As a result, care is needed not to impose through the national legislation a set of requirements which while suitable for medicine or nursing would be unnecessary and inefficient for much smaller professions. (p5)

Comments of the ADC:

The ADC is also mindful of the note of caution in the paper that requirements in the legislation that might be intended to address arrangements in the larger nursing or medicine professions should not impact unreasonably on other health professions, including dentistry.

3.5 More flexible committee arrangements

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.

Submission of the ADC:

This proposal will need to be able to address the situation of multi-profession groups such as in dentistry where the composition provisions will need to ensure that at least one member of the relevant profession within dentistry is included on a panel, within the overall structure proposed for these panels.

3.6 Further safeguards around delegations

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.

Submission of the ADC:

3rd bullet point – enshrining a specific time limit in legislation is potentially unnecessarily limiting. The time needed to resolve matters will vary and will depend on the nature of the issue, eg the board may require assessments and reports from external agencies/individuals. Using the phrase 'as soon as practicable' or 'as soon as possible' should provide sufficient protection for a suspended practitioner. Alternatively, the statutory limit will need to be generous to ensure this aspect of the scheme does not become bound up in administratively generated reviews.

4 Appointments to board (non-statutory) committees or (statutory) panels

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

Submission of the ADC:

The ADC supports proposal 4.1.1.

Option 1 gives maximum autonomy to the board (which makes sense given that these committees will operate under delegation from the board) and should also allow recruitment from the widest possible pool, which is desirable. It will require significant administrative effort to undertake this recruitment, but this should be less of an issue under the new scheme where additional, shared administrative resources are available. Consideration should be given to the proposed appointment process being applied to a list from which selection will be made by the board for appointment to relevant committees (is envisaged under option 2 for proposal 4.1.2 below).

Option 3 is not supported.

With respect to statutory panels established by boards for the purposes of conducting hearings arising from conduct, performance or health matters, while the legislation would specify procedural matters, there are three options with respect to the appointment process:

- 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
 - 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 approved process would include a nominee of the Ministerial Council on selection panels, with that nominee not having a right of veto, and would provide for persons to be appointed to a list. Persons on the list would then be eligible for appointment by a board to sit on a hearing panel arising from a conduct, performance or health matter.
- Option 3:** The legislation makes provision for any person appointed by a board to a statutory committee or hearing panel to be drawn from a list of persons approved by the Ministerial Council.

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

Submission of the ADC:

Ditto above comments.

5 Interaction of national scheme with other legislative schemes

There are six main options for determining suitable arrangements with respect to the interface between the national scheme and each of the legislative schemes listed. These are:

- Option 1:** One jurisdiction's law applies (for example Queensland or Commonwealth)
- Option 2:** All applicable State and Territory laws apply
- Option 3:** No jurisdiction's laws apply (for example the Bill and/or consequential amendments to other legislation specifically remove the scheme from coverage)
- Option 4:** Tailor made provisions are included within the legislative scheme itself
- Option 5:** Consequential amendments to another legislative scheme to recognise the national registration scheme (technically different to option 1, but has the same effect), or
- Option 6:** Interface is dealt with administratively rather than legislatively.

There are a number of criteria that can be used to guide these policy deliberations:

- efficiency of operation – for example, the need to avoid unnecessary duplication of effort and minimise costs to boards of administering the scheme
- transparency of decision making – for example, the same rules should apply, no matter where a consumer, complainant or registrant are located
- accountability of decision makers – for example, the legislation should provide clarity as to who makes decisions under the scheme and what avenues of review are available
- consistency and/or uniformity of application across Australia – for example, wherever possible, given the objective is to establish a national scheme, national laws should apply, rather than multiple State and Territory laws.

Submission of the ADC:

It is difficult to evaluate the specific merits of each of these options. The ADC supports the proposed criteria and, in general, the proposed approach to the various interfacing legislation, on the proviso that the option that is proposed and adopted should be the one that makes it as easy as possible for consumers, practitioners and others to:

(a) ascertain what rules operate, and

(b) understand how they operate.

Consistency and uniformity should be the desired outcome, so that the benefits of having a national scheme are delivered.

6 Trans-Tasman Mutual Recognition and the national scheme

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

Submission of the ADC:

The ADC and the jurisdictional dental boards in Australia have close links with the Dental Council of New Zealand, including a joint ADC-DCNZ Accreditation Committee for program accreditation activities, and some shared processes also in the assessment of overseas trained dentists. These are valuable linkages and the ADC is strongly supportive of their continuation and ongoing development, as envisaged in proposal 6.1.

