

DENTAL ACTS AND BOARDS¹

1 Introduction

1.1 Background

Dentistry was first regulated by legislation in Britain in 1878 and two years later in New Zealand. In Australia, the first Dental Act received Royal Assent in the colony of Victoria on 16 December 1887. Since then the practice of dentistry has been regulated by the States and Territories to provide protection and safety to the public.

In 1992 the Commonwealth Government and every State and Territory Government passed Mutual Recognition Acts, which guaranteed a practitioner registered in one jurisdiction could automatically register in any other. This led to the formation of the Australian Dental Council (ADC) which was charged by the Boards to accredit courses of education and training leading to registration of dental practitioners and also to examine overseas trained dentists.

In April 2007 the Council of Heads of Australian Governments (COAG) announced the structure that from 1 July 2008 would administer the national process of registration for nine professional groups that at the time were registered in every jurisdiction. COAG's decision included the establishment of nine separate National Registration Boards, one for each professional group.

1.2 Definitions

1.2.1 BOARD is a Federal, State or Territory dental registration board.

1.2.2 DENTAL ACT is any Federal, State or Territory Act that has a primary purpose to regulate the practice of dentistry.

1.2.3 FITNESS TO PRACTISE includes:

- the applicant's mental and physical health;
- the applicant's command of the English language;
- the applicant's criminal history;
- any deregistration, suspension, condition or limitation imposed under a similar law; and
- the applicant's recency of practice.

1.2.4 RECENCY OF PRACTICE means that a practitioner has maintained an adequate connection with the profession since qualifying.

Recency of practice requirements may include:

- the nature, extent and period of practice;
- the nature and extent of any continuing professional development undertaken;
- the nature and extent of any research, study or teaching relating to dentistry; and
- the nature and extent of any administrative work relating to dentistry.

¹ This Policy Statement is linked to other Policy Statements: 2.1 *Dental Workforce*, 2.2 *Dentists*, 2.3 *Allied Dental Personnel*, 2.4 *Specialisation in Dentistry*, 2.8 *Overseas Trained Dentists*, 2.9 *Recency of Practice*, 4.7 *Regulatory Authorities*, 4.10 *Accrediting Authorities*, 5.3.1 *Healthcare Workers (incl. Students) Infected with Blood-Borne Viruses*, 5.3.2 *Management of Impaired Practitioners* & 5.13 *Advertising in Dentistry*

- 1.2.5 RENEWAL OF REGISTRATION is the process of re-registering a person already registered.

2 Principles

2.1 Purpose of Regulation

To ensure the health and safety of the community, it is essential to regulate dental practice as it includes irreversible, invasive and exposure prone procedures and potentially fatal risks.

2.2 Dental Act Objects

The Objects of a Dental Act should be to:

- 2.2.1 Protect the public by ensuring that health care is delivered by health care providers in a professional, safe and competent way; and
- 2.2.2 Uphold the standards of practice within the health professions; and
- 2.2.3 Maintain public confidence in the health professions; and
- 2.2.4 Provide a uniform system to deal with complaints, investigations and disciplinary proceedings relating to health care providers, and to the management of impaired practitioners; and
- 2.2.5 Provide a system to deal with complaints about practitioners that is complementary to the States and Territories health complaints commissions.

2.3 Boards

Boards must reflect contemporary community expectations of standards of dental care, as well as those of oral care providers and other relevant scientific and standard setting bodies. In order for Boards to function effectively, Board members must understand the role of Boards, and must have or acquire a broad knowledge of health, governance, communication and legal issues.

3 Policy

3.1 Boards

3.1.1 *Composition of Boards*

Any Board must be expert with regard to the practice of the whole of dentistry. Therefore the composition of the Board must be based on expertise and allow for representation of oral health practitioners other than dentists.

Boards should be composed of the following:

- Dentists, who should –
constitute a majority of the Board;
include a representative of the Deans of Dental Schools of Australia, and
be practising in a clinical setting, without a condition on their registration;
- one of each of the registered allied dental care providers;
- one consumer representative; and
- one lawyer.

Appointment of dental care provider Board members, especially dentists, should include some who are elected by their peers.

3.1.2 ***President and Vice President of the Boards***

The President and Vice-President of the Boards must be dentists.

3.1.3 ***Role of Boards***

The role of Boards should be to:

- protect public health and safety by -
setting minimum standards of dental practice through promulgation of Codes of Practice, Policies and Guidelines,
counselling and/or disciplining oral care providers, and
maintaining a Register, part of which is open to the public;
- register dental care providers.

3.1.4 ***Governance of Boards***

Good governance of Boards should include the following:

- measures to ensure that appointees are competent to be Board members;
- use of outside expertise;
- decisions based on evidence; and
- consultation with stakeholders before promulgation of Codes, Policies and Guidelines.

3.1.5 ***Communication with Registrants***

- It is essential that Boards keep their registrants fully informed on matters pertaining to the regulation of dental practice within the Board's jurisdiction.
- Communication with all registrants should include:
Annual Reports,
provision of a complete set of statutory requirements to registrants, i.e. the Act, Regulations, Codes of Practice and Guidelines,
any update of statutory requirements,
education of registrants via seminars, information sheets etc. to assist their compliance with the statutory requirements,
availability of Dental Register.

3.1.6 ***Communication with the Public***

- It is essential that Boards inform the public on relevant matters pertaining to the regulation of dental practice within the Board's jurisdiction.
- Communication with the public should include:
availability of that part of the Dental Register which is open to the public,
Annual Reports,
current statutory requirements

but, should not include:
any claims lodged or settlements determined,
any conditions on registration that are not current,
the naming of impaired providers who are not currently practising,
any previous penalties levied against a dental care provider.

3.2 **Registration**

3.2.1 ***Types of Registration***

There must be provision for separate registers of:

- dentists including dental specialists; and
- operative allied dental personnel -
dental hygienists

dental therapists, and
dental prosthetists (denturists).

3.2.2 **Criteria for Registration**

All registrations must be based on the holding of appropriate qualifications, fitness to practise and recency of practice.

3.2.3 **Accreditation of Qualifications**

Accreditation of qualifications should be done by an accrediting authority although such a body may be part of or should report to a board.

3.2.4 **Examination of Holders of Unaccredited Qualifications**

Boards must have the power to decide if the holders of unaccredited qualifications have an equivalent qualification to an accredited Australian qualification and have the power to examine such persons. However Boards should delegate this assessment and examination function to an accrediting authority.

3.2.5 **Fees**

Registration fees must be calculated on a cost recovery and apply equally to all practitioners.

3.2.6 **Renewal of Registration**

Registration must be renewed every year and practitioners must continue to meet fitness to practise and recency of practice requirements.

3.3 **Restriction of Practice and Definition of Dentistry**

3.3.1 **Restriction of Practice**

The Dental Act must make it illegal for persons who are not dentists to practise dentistry. Exceptions should be made for:

- students and other dental registrants for their scope of practice;
- medical practitioners (for dental emergencies);
- anyone to provide first aid in emergencies; and
- removal of primary teeth without local or general anaesthetic by parents or other persons.

The removal of primary teeth by parents or other persons without local or general anaesthetic should also be excluded from the restriction.

The scope of practice and supervision requirements for operative allied dental personnel should be defined in Regulation along with prescribed qualifications.

3.3.2 **Definition of Dentistry**

The practice of dentistry should be defined in Dental Acts as:

- diagnosis or management of conditions of the mouth of a person;
- performance of any invasive and/or irreversible procedure on the natural teeth or parts of a person's body associated with their natural teeth;
- provision of artificial teeth or dental appliances or insertion of artificial teeth for a person; or
- making an intraoral adjustment of artificial teeth or dental appliances for a person.

3.4 Obligations on Registrants and Other Persons and Entities

3.4.1 *Restriction of Titles*

- The titles for dentists that should be protected and reserved are "dentist", "dental surgeon" and "dental practitioner".
- The recognised titles for each dental speciality should be protected and reserved for persons registered as specialists.
- The titles for operative allied dental personnel that should be protected and reserved are "dental hygienist" and "dental therapist", and "dental prosthetist" or "denturist".
- Students enrolled in dental education programs should be identified as such. Examples are "student dentist", "orthodontic registrar", "oral and maxillofacial surgery trainee".
- The use by any dentist of the honorary title "doctor" should be continued.

3.4.2 *Falsely Holding Out*

There must be provisions in Dental Acts prohibiting persons who are not registered as any category of registrant from holding themselves out as registrants and also to ensure registrants only use titles for which they have been registered. It should also be an offence to hold out falsely another person to be a registrant if they are not. Persons also should not be allowed to use the word "specialist" or "speciality" or "specialty" in circumstances that indicate or could reasonably be understood to indicate, that the person provides professional services in an area of dentistry that is not presently recognised as a speciality.

3.4.3 *Advertising*

Provisions giving the Board power to act against false, misleading and deceptive advertising should be included in a Dental Act.

3.4.4 *Payment for Referrals*

Payments for referrals and receiving payments for referrals must be prohibited.

3.4.5 *Professional Standards*

Dental Acts should give Boards the power to make Codes of Practice and other professional standards.

3.4.6 *Penalties*

The penalties applicable to persons successfully prosecuted for breaches of the obligations above should be substantial to deter illegal practice and to protect the public.

3.5 Complaints

3.5.1 *Who May Make Complaints*

A complaint against a registrant may be made by any person including but not limited to a patient, a patient's representative or another registrant.

3.5.2 *Who May Receive Complaints*

The Board or a commission may receive a complaint but whichever receives the complaint must report it to the other authority if it concerns the treatment of a patient.

3.5.3 ***Role of State Health Complaints Commissions [commissions]***

Commissions are to undertake the assessment and conciliation of complaints. If any jurisdiction does not have a commission then a committee appointed by the Board should undertake this role.

3.5.4 ***Assessment of Complaints***

Where a complaint is kept by the Board or is referred by a commission, the Board must be empowered to assess the complaint before deciding to investigate it or not.

3.6 **Investigations**

3.6.1 ***Conduct of Investigations***

Boards must decide whether to investigate a complaint or a matter about a registrant unless directed to investigate by the Minister. Boards and investigators appointed by them must have adequate powers to conduct investigations.

3.6.2 ***Notice of Investigation***

As soon as practicable after deciding to investigate a complaint or practitioner, Boards must give the practitioner concerned notice of the investigation.

3.6.3 ***Investigators***

Any investigator appointed by the Board will be provided with written authority to conduct the investigation and will provide proof of such appointment when required.

3.6.4 ***Reports of Investigation***

The investigator on completion of the investigation will give the Board a preliminary report of investigation. The Board as soon as practicable after receiving a preliminary report will prepare its report of investigation and may adopt the preliminary report with or without changes.

3.6.5 ***Actions Open on Completion of Report of Investigation***

Boards must decide to do one of the following:

- If a Board believes the matter is one deserving suspension or deregistration as a penalty it must refer the matter to hearing by a Tribunal;
- If the matter follows action to suspend immediately the practitioner and the investigation indicates further disciplinary action is necessary, a Board must refer the matter to a Tribunal;
- Otherwise the Board may
 - refer the matter for disciplinary action by a committee of the Board, which may conduct a hearing or action by correspondence or enter into an undertaking with the practitioner, with the practitioner's agreement, about the practitioner's conduct or practice;
 - refer the matter to a commission with the commission's agreement;
 - deal with the matter under the Part of the Dental Act dealing with impairment;
 - take no further action.

3.7 **Immediate Suspension and Imposition of Conditions**

3.7.1 ***Protective Purpose***

Boards must have the power to effectively respond to imminent threats posed by registrants to the wellbeing of vulnerable persons. Boards must have the power to suspend or impose conditions on the registration of the practitioner.

3.7.2 ***Minimum Necessary***

Boards must take appropriate action to protect the vulnerable persons.

3.7.3 ***Natural Justice***

Boards must allow a practitioner reasonable time to respond to a complaint or action before taking action themselves.

3.7.4 ***Board must Investigate or Refer for Hearing***

Once a Board has decided to take action it must decide to either investigate the matter or refer it directly to a Tribunal.

3.7.5 ***Right of Appeal***

A practitioner subject to action by a Board may appeal the Board's decision to a Tribunal. In the case of suspension, the Tribunal shall deal with the appeal expeditiously.

3.8 **Informal Disciplinary Processes**

Informal disciplinary processes are those conducted by a Board or its committee and must have the following characteristics:

3.8.1 The penalties open to a Board or its committees shall be restricted to caution, reprimand and undertakings.

3.8.2 The practitioner shall not be entitled to legal representation at any hearing.

3.8.3 There shall not be public access to informal processes.

3.8.4 The practitioner must have the right to request a formal hearing by a Tribunal.

3.8.5 The recording of penalties on the public register must be at the Board's discretion.

3.9 **Formal Disciplinary Processes**

3.9.1 A Tribunal should be a Judge of the Federal Court advised by a dentist and a practitioner of the same profession and category as the practitioner subject to the action.

3.9.2 The practitioner before a Tribunal shall be entitled to legal representation.

3.9.3 All formal proceedings should be open to the public unless decided otherwise by the Tribunal.

3.9.4 The Tribunal may impose penalties including deregistration, suspension, conditions and fines which must be paid to the Board.

- 3.9.5 Any adverse disciplinary decision of the Tribunal must be recorded on the public register.
- 3.9.6 Any conditions imposed by the Tribunal upon the practitioner should be for not more than three years. Thereafter the conditions can be reviewed by the Board.
- 3.9.7 In any review by a Board pursuant to 3.9.6, the Board shall be at liberty to impose further restrictions on the practitioner as may be consistent with the Tribunal's earlier findings.

3.10 **Monitoring Compliance with Disciplinary Decisions**

3.10.1 ***Power to Monitor Compliance***

Boards must have adequate powers to monitor and enforce compliance with orders of a Tribunal, conditions and undertakings.

3.10.2 ***Appointment of Inspectors***

Boards shall appoint inspectors with similar powers to investigators for the purpose of monitoring compliance with orders, conditions and undertakings. It is possible that a person may be appointed as both an inspector and an investigator.

3.11 **Appeals**

3.11.1 ***Appeals Authorities***

Appeals against decisions of a Board shall be made to the Federal Court. If the matter involves a complaint by a patient, the appeal shall be made to a Tribunal.

Appeals from Tribunals shall be by way of customary process for appeals from the Federal Court.

3.11.2 ***Who May Request Appeal***

A practitioner subject to a decision of a Board or a Tribunal may appeal that decision or a Board may appeal a decision of a Tribunal.

3.11.3 ***Appeals to be Dealt with by Re-hearing***

Any appeal is to be dealt with by re-hearing.

3.12 **Impairment**

Boards must have the power to deal with impaired practitioners in a process separate from the usual disciplinary processes. Continued practice by practitioners recovering from impairment is not inconsistent with maintenance of professional standards and safety of the public.

Policy Statement 4.9

Adopted by ADA Federal Council, May 30, 2007.