

Policy Statement 5.8 – Dental Acts, the National Law and Boards

Position summary

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

1. Background

- 1.1. In Australia, the first Dental Act was legislated in 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.
- 1.2. 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 qualified dentists.
- 1.3. In March 2008, the Council of Heads of Australian Governments (COAG) decided to establish a single National Registration and Accreditation Scheme for 10 health practitioner professions, including dentistry (later expanded to 14 professions). The National Scheme, although not a Commonwealth scheme, was enacted through specific legislation in all jurisdictions and commenced in July 2010.
- 1.4. Since July 2010, the Dental Board of Australia has administered the National Law to regulate the practice of dentistry in Australia. The Australian Health Practitioner Regulation Agency (AHPRA) works with the 14 National Health Practitioner Boards in implementing the National Registration and Accreditation Scheme.

Definition

- 1.5. AUSTRALIAN HEALTH PRACTITIONER REGISTRATION AGENCY (AHPRA) is the agency that supports the National Boards to implement the National Registration and accreditation Scheme.
- 1.6. ALLIED DENTAL PERSONNEL are those, other than dentists, working in the provision of dental services.
- 1.7. BOARD is the Dental Board of Australia.
- 1.8. COMMISSION is any State Health Complaints Commission.
- 1.9. DENTAL ACT is any Federal, State or Territory Act that has a primary purpose to regulate the practice of dentistry
- 1.10. DENTAL PRACTITIONER is a person registered by the Board to provide dental care.
- 1.11. DENTIST is an appropriately qualified dental practitioner, registered by the Board to practise all areas of dentistry.
- 1.12. FITNESS TO PRACTISE includes:
 - the applicant's mental and physical health;
 - the applicant's command of the English language;
 - the applicant's criminal history;

This Policy Statement is linked to other Policy Statement: 3.1 Dental Workforce, 3.2 Dentists, 3.3 Allied Dental Personnel, 3.4 Specialisation in Dentistry, 3.8 Overseas Qualified Dentists, 3.9 Recency of Practice, 5.9 Dental Accreditation Authority, 5.21 Regulatory Authorities, 6.3 Healthcare Workers (incl. Students) Infected with Blood-Borne Viruses, 6.4 Management of Impaired Practitioners & 6.9 Advertising in Dentistry.

- any deregistration, suspension, condition or limitation imposed under a similar law, and
 - the applicant's recency of practice.
- 1.13. NATIONAL LAW is the Health Practitioner Regulation National Law Act 2009 as in force in each state and territory.
- 1.14. NATIONAL SCHEME means the National Registration and Accreditation Scheme.
- 1.15. REGENCY 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.
- 1.16. RENEWAL OF REGISTRATION is the process of re-registering a person already registered.
- 1.17. TRIBUNAL is a committee or board appointed to adjudicate in a matter that relates to registered health practitioners.

2. Position

Purpose of Regulation

- 2.1. 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.

Dental Act Objects

- 2.2. The Objects of a Dental Act should be to:
- Protect the public by ensuring that health care is delivered by health care providers in a professional, safe and competent way; and
 - Uphold the standards of practice within the health professions; and
 - Maintain public confidence in the health professions; and
 - Provide a uniform system to deal with complaints, investigations and disciplinary proceedings relating to dental practitioners, that is complementary to the systems used by various States' and Territories' Health Complaints Commissions; and
 - Provide a system for the management of impaired dental practitioners.

The Board

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

Composition of the Board

- 2.4. The 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 while also allowing representation of dental practitioners by

practitioners other than dentists.

The Board should be composed of the following:

- Dentists in clinical practice should constitute a majority of the Board, and must not possess any conditions on their registration;
- one of each of the registered allied dental practitioners;
- one consumer representative; and
- one lawyer.

2.5. The Chair and Vice-Chair of the Board must be dentists.

Role of the Board

2.6. The role of the Board should be to:

- Protect public health and safety by -
 - » setting Registration Standards for dental practice.
 - » prescribing the clearly defined scopes of practice of dental practitioners
 - » counselling and/or disciplining dental practitioners; and entities involved in the provision of dental care; and
 - » registering and maintaining a Register of dental practitioners.
- Communicate with the public which should include:
 - » making available that part of the Dental Register which is open to the public;
 - » publishing Annual Reports; and
 - » any other statutory requirementsbut 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; and
 - » any previous penalties levied against a dental practitioner.

Types of Registration

2.7. There must be provision for separate registers of:

- dentists including specialist dentists;
- dental hygienists;
- dental therapists;
- oral health therapists; and
- dental prosthetists

Criteria for Registration

- 2.8. All registrations must be based on the holding of appropriate qualifications, and satisfying the applicable Registration Standards.

Fees

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

Renewal of Registration

- 2.10. Registration must be renewed every year and dental practitioners must continue to satisfy the relevant Registration Standards.
- 2.11. Accreditation of Qualifications
- 2.12. Accreditation of qualifications should be done by an independent accrediting authority which may be part of, or should report to the Board.

Examination of Holders of Unaccredited Qualifications

- 2.13. The Board must have the power to decide if the holders of unaccredited qualifications have a qualification equivalent to an accredited Australian qualification through assessment and examination of such persons. The Board should assign this assessment and examination function to an accrediting authority.

Restriction of Practice

- 2.14. Dental Acts must make it illegal for persons who are not dental practitioners to perform restricted dental acts upon another person:

Exceptions should be made for:

- dental practitioner students;
- medical practitioners (for dental emergencies only);
- anyone for the provision of first aid in emergencies.
- the removal of loose primary teeth by parents or other persons with consent.
- the scope of practice and supervision requirements for allied dental practitioners should be defined in Regulation along with prescribed qualifications.

Definition of Restricted Dental Acts

Restricted Dental Acts should be defined in Dental Acts.

Restriction of Titles

- 2.15. The titles for dentists that should be protected and reserved are “dentist” and “dental surgeons”.
- 2.16. The recognised titles for each dental specialty should be protected and reserved for persons registered as specialists.
- 2.17. The titles for allied dental practitioners that should be protected and reserved are “dental hygienist”, “dental therapist”, “oral health therapist”, and “dental prosthetist”.
- 2.18. Students enrolled in dental education programs should be identified as such. Examples are “student dentist”, “Orthodontic registrar”, “Oral and Maxillofacial Surgery trainee”.
- 2.19. Amongst registered dental practitioners, the use of the honorary title “doctor” should be restricted to dentists

Holding Out

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- 2.20. There must be provisions in Dental Acts prohibiting persons who are not registered 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 falsely hold out another person to be a registrant if they are not.
- 2.21. Dental practitioners should be prohibited from using the words “specialist” or “speciality” where they are not registered under that speciality, or 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.
- 2.22. Allied dental personnel should use their appropriate titles and not the generic title “dental practitioner” which could reasonably be understood to imply that the person provides services as a dentist.

Advertising

- 2.23. Provisions giving power to act against false, misleading and deceptive advertising should be included in a Dental Act, notwithstanding the statutory rights available to consumers under the Australian Consumer Law.

Payment for Referrals

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

Professional Standards

- 2.25. Dental Acts should give the Board the power to make Registration Standards.

Penalties

- 2.26. 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.

Complaints/Notifications

- 2.27. The Board or one of its committees must be involved along with any Commission in dealing with complaints about dental practitioners. If any jurisdiction does not have a Commission, then a committee of the Board should undertake the role usually undertaken by the Commission.
- 2.28. All investigations and disciplinary processes arising from complaints/notifications must allow procedural fairness and abide by the principles of natural justice, including transparency, timeliness and a right to be heard.

Investigations

- 2.29. The Board may investigate a complaint/notification or appoint an investigator to conduct the investigation. Any investigator must be able to provide proof of such appointment when asked.
- 2.30. Investigations must be conducted in a timely manner and in most instances, preliminary or final decisions should be reached within three months of receipt of a complaint/notification.
- 2.31. Following an investigation, the Board must decide to do one of the following:
- If the Board believes the matter is one deserving suspension or deregistration as a penalty it must refer the matter to formal disciplinary hearing by a Tribunal;
 - If the matter follows action to immediately suspend the practitioner and the investigation indicates further disciplinary action is necessary, the Board must refer the matter to a Tribunal;
 - Otherwise the Board may
 - » refer the matter for informal 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 practise; or
- » refer the matter to a commission with the commission's agreement; or
- » deal with the matter under the Part of the National Law dealing with impairment; or
- » take no further action.

Immediate Suspension and Imposition of Conditions

2.32. The Board must have the power to effectively respond to imminent threats to the wellbeing of vulnerable persons posed by registrants. The Board must have the power to suspend or impose conditions on the registration of the practitioner, provided natural justice is allowed.

Informal Disciplinary Processes

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

- The penalties open to the Board or its committees shall be restricted to caution, reprimand and undertakings.
- The person shall be entitled to be accompanied by another person.
- There shall not be public access to informal processes.
- The person must have the right to request a formal hearing by a Tribunal.
- The recording of penalties on the public register must be at the Board's discretion.

Formal Disciplinary Processes

2.31. Formal disciplinary processes must have the following characteristics:

- At first instance, they should be heard before a Tribunal consisting of a Magistrate or a Judge of a State or Territory Court, a dentist and a dental practitioner of the same profession and category as the practitioner subject to the action.
- A person before a Tribunal shall be entitled to legal representation.
- All formal proceedings should be open to the public unless decided otherwise by the Tribunal.
- The Tribunal may impose penalties including deregistration, suspension, conditions and fines which must be paid to the Board.
- Any adverse disciplinary decision of the Tribunal must be recorded on the public register.
- Any conditions imposed by the Tribunal upon the person should be reviewed expediently at an appropriate interval not exceeding three years. Thereafter the conditions can be reviewed by the Board.

Power to Monitor Compliance

2.32. The Board must have adequate powers to monitor and enforce compliance with Tribunal orders.

Appointment of Inspectors

2.33. The Board 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.

Appeals

2.34. Appeals against decisions of the Board shall be made to a Tribunal and involve a rehearing.

2.35. Under certain limited circumstances, a Tribunal decision can be reviewed by a superior court of the participating jurisdiction.

Impairment

2.36. The Board 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.

2.37. Treating health practitioners should be excluded from mandatory notification requirements under the National Law.

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