

13 April 2010

The Committee Manager
Committee on the Health Care Complaints Commission
Parliament House
Macquarie Street
SYDNEY NSW 2000

VIA EMAIL

Dear Mr Keenan

Inquiry into the Operation of the Health Care Complaints Act 1993

Please find enclosed our written response to questions put to us by members of the Committee on the Health Care Complaints Commission in a letter dated 17 March 2010.

On behalf of ADA NSW I would like to thank the Committee for the opportunity to provide this input and advice and would be available to provide further comment or clarification on any of these matters should the Commission so require.

If you would like to discuss these matters further please do not hesitate to contact me on (02) 8436 9900.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mall', with a long horizontal line extending to the right.

Matthew Fisher PhD
Chief Executive Officer
Australian Dental Association (NSW Branch)

Question 1: What do you consider to be the key elements of the national scheme in terms of its impact on the Association and dental practitioners generally?

A key driver of national registration is the establishment of a single national registration scheme for health care professionals including dentists and other dental professionals. From 1 July 2010 all dentists, dental therapists, oral health therapists, dental hygienists and dental prosthetists will have to meet the same requirements to be registered and their registration will be recognised in all States and Territories. We believe this will have a small but positive impact in terms of reducing the burden of regulation and increasing workforce mobility, particularly between states.

Even at this point in time however, the impact of other key elements of the scheme is difficult to determine or remain unknown.

In New South Wales the *Health Practitioner Regulation National Law* (the national law) sets out the regulatory framework for the new scheme. A key change involves the creation of the new Dental Board of Australia which, from 1 July 2010, will operate with a full range of functions as adopted in NSW.

In December the Dental Board of Australia finalised proposals on registration standards and related matters for submission to the Australian Health Workforce Ministerial Council for approval (at this point in time a response has not been made public). The proposed standards are based on submissions to a Board consultation paper and subsequent refinement by the Board. The proposals broadly relate to the following:

- criminal history check
- English language requirements
- mandatory professional indemnity insurance
- mandatory continuing professional development
- recency of practice
- board specific registration standard (scopes of practice)
- specialist registration
- endorsement of area of practice (conscious sedation)

In addition to this the Board has released guidelines dealing with the following issues:

- advertising
- mandatory reporting
- board code of conduct
- continuing professional development
- infection control
- dental records



Both ADA NSW and our federal body ADA Inc are still assessing the impact these processes will have on our membership and the profession. Whilst they appear to be reasonable in the circumstances, the changes are significant and there is a large amount of information to take in and assess in a very short time frame.

Notably, New South Wales has chosen to opt out of the complaints handling process established under the new national registration scheme. It is for this reason that legislation that will guide the system has not yet been introduced into NSW parliament. We anticipate that this legislation will parallel the national system and will be an omnibus act – that is, there will not be a specific dental practice act. As you would understand, this affects many other pieces of legislation that articulate with the primary act.

Question 2: The Association's original submission noted that the health care complaints process needs to interface with the profession specific board to provide appropriate context and resolution to complaints. Do you consider that this is in fact the case under the current Health Care Complaints Act, and if not, what would you recommend could be done to improve this?

The Branch is very supportive of current provisions which enable the Health Care Complaints Commission (the Commission) Inquiry Service to suggest 'more appropriate avenues' for people concerned about dental care provided to them.

In early 2008 the HCCC contributed an article which was published in the February edition of our member magazine discussing the reasons prompting, and management of, dental complaints handled by the Commission with statistics from the 2006-07 financial year.

Of 2,722 complaints received by the Commission in 2006-07, just 173 related to dentists. Over two-thirds of these complaints were referred to the NSW Dental Board for appropriate action. Another 20 per cent were discontinued as they did not raise significant issues of health and safety for the patient.

The Commission's article stated that the number of complaints referred to the Dental Board reflects 'the robust structures and programs the Board has in place for addressing treatment and professional conduct'. The Branch agrees with this sentiment wholeheartedly.

The Dental Board is an extremely experienced, specialist organisation. Its functions are clearly detailed in the Dental Practice Act 2001 and include protection of public health and safety as well as the maintenance and promotion of professional standards of dental practice in New South Wales.

We strongly believe that the ability of the Commission to refer complaints to the Board helps engender confidence in our members that complaints against them will be investigated and assessed by an organisation with specialist dental knowledge.

We believe this should also help to promote confidence from the public that complaints about dental care are resolved in the most appropriate manner.

Question 3: As the NSW Branch of a national organisation, is the Association aware of any anecdotal or empirical evidence as to perceptions among dentists of the effectiveness of different modes of regulation? If so, is there any consensus as to the best model of regulation for the profession?

It would be extremely difficult to provide the Committee with anecdotal or empirical evidence as to perceptions among dentists of the effectiveness of different modes of regulation for the dental profession.

However, there is general consensus and support within the profession that the following guiding principles should underpin any model of regulation:

- public safety must be paramount;
- high quality health care must be protected and advanced;
- natural justice processes must be maintained;
- the costs of regulatory change should be minimised and the amount of “red tape” reduced; and
- governments should be accountable and processes transparent

In addition, the Branch recognises that consumers of health services have a key role in overseeing standards. However a balance must be struck between the understanding of professional standards and regulation applied by peers versus consumer sentiment and/or judgements applied complaints bodies with little or no expertise in clinical care.

It is widely acknowledged that peers in dentistry are often more harsh in their judgements in comparison to that applied by consumers, particularly with regards to clinical standards. Consumers may in fact be looking for a different satisfaction from the complaints resolution process.

The Branch recognises and supports the requirement for natural justice processes to be applied equally through varied authorities, whether that is a registration board, a health care complaints body or consumer fair trading body. A cost effective, administratively simple system which avoids overly legalistic processes would be a good outcome.

Question 4: On page one of the Association’s supplementary submission – that following on from the Committee’s Discussion paper – there are a list of issues which the Association does not agree with. Could you take the Committee through these?

The HCCC being both the notifier and investigator of a complaint (Issue 11)

There is not much more we can add, other than what we stated in our supplementary submission. We do not support the suggestion that the HCCC can be both the notifier and investigator of a complaint. The powers of the HCCC have been increased in this regard by recent amendments regarding, inter alia, associated complaints. We think powers granted to the HCCC under the Act are broad enough and do not need to be strengthened further.

Nevertheless as we state in our supplementary submission, if the Committee feels compelled to support this suggestion we propose that a “nominal notifier”, a person with authority to make such a decision, is preferable to some other anonymous process.

Amending the Act to provide that, at the end of an investigation, in the event of disagreement between the Commission and the relevant Registration Authority, the most serious course of action proposed by a party should be followed (Issue 24)

This issue is dealt with in some detail in Question 3 above. We strongly believe that an appropriate balance must be struck between the understanding of professional standards and regulation applied by peers versus consumer sentiment and/or judgements applied by complaints bodies with little or no expertise in clinical care.

It is widely acknowledged that peers in dentistry are often more harsh in their judgements in comparison to that applied by consumers, particularly with regards to clinical standards. Indeed, as noted in our answer to Question 2, even the Commission has acknowledged that the high number of complaints it refers to the Dental Board reflects ‘the robust structures and programs the Board has in place for addressing treatment and professional conduct’.

As the relevant Registration Authority, the Dental Board is an extremely experienced, specialist organisation. Its functions are clearly detailed in the Dental Practice Act 2001 and include protection of public health and safety as well as the maintenance and promotion of professional standards of dental practice in New South Wales.

The HCCC adopting NSW Health open disclosure processes (Issues 25-26)

As stated in our supplementary submission, the HCCC is not part of NSW Health and an investigation by the HCCC is not part of the NSW Health open disclosure process. The HCCC should not be required to adopt the relevant policy. While adoption of the open disclosure may seem at first seem desirable, the processes are quite separate and have different objectives – the two should not be intermingled.

The Association contends that the issue of the Health Care Complaints Commission notifying an Area Health Service with respect to a complaint has to an extent been dealt with by the Service Check Register for NSW Health Services, and that you are concerned that an Area Health Service would take the view that the practitioner is ‘guilty before being proved innocent’. Please expand.



All full-time, part-time, temporary and casual staff of the NSW Health Services and all visiting practitioners must be checked against the state Service Check Register as part of a recruitment process or prior to finalising actions arising out of a disciplinary process.

The Service Check Register is an electronic statewide database. It contains records of actions taken during or at the conclusion of an investigation into a serious disciplinary matter. Actions imposed by a Health Service include restrictions on duties; suspension; dismissal; termination; or non-renewal of an appointment of a staff member or visiting practitioner.

The Committee's Discussion Paper notes that occasionally the Commission receives complaints which relate to practitioners who are currently working at a particular AHS, but which do not raise issues which relate to that AHS. Under the current provisions of the Act, the AHS is not notified until the complaint has been assessed. We believe that where a complaint does not relate to an AHS, it is appropriate not to inform the AHS until after the complaint has been assessed, which should only be a short a period of time in any case.

As stated in our answer to Question 3, a guiding principle to underpin any model of regulation of the profession is that natural justice processes must be maintained.

Question 6: Are there any other comments that you would like to make with respect to the Inquiry's Terms of Reference.

None.

Question 7: Is there any thing you would like to suggest which would assist the Committee in the exercise of its oversight role?

None.