Submission to the Inquiry into the Performance of the Australian Health Practitioner Regulation Agency

1. About the ADAVB

The Victorian Branch of the Australian Dental Association (ADAVB) is the peak body for the dental profession in Victoria, and represents over 90% of registered dentists, working in both public and private sectors. The ADAVB engages in policy work on all aspects of oral health and dental service delivery.

Our mission is to promote the art, science and ethics of dentistry, and the oral health of all Victorians. The ADAVB is highly respected, providing a variety of services and information to members as well as government representation, ensuring the maintenance of dentistry practice standards for the benefit and protection of the public and dental staff. In regards to the regulation of dental practitioners, the Association has a fundamental public interest that we wish to serve in addressing our commitment to safe and ethical health care.

ADAVB Community Relations Officers

The ADAVB is keenly aware of the roles and responsibilities of both AHPRA and the Victorian Health Services Commissioner (HSC). The ADAVB offers its own complaint resolution service in the interests of both its members and the public. The ADAVB complaint resolution service is offered as a free service between patients and dentists insured with the ADAVB's preferred indemnity insurer. Currently, the Branch's recommended professional indemnity insurer is Guild Insurance Limited (GIL). Most, but not all ADAVB members, choose to participate in the ADAVB Dentists Liabilities Insurance Policy.

The Community Relations Officer (CRO) support service is offered by the ADAVB in the interests of ensuring that patient concerns are addressed in a professional manner, reinforced by expert clinical knowledge. Senior dental practitioners appointed to the CRO role operate solely as facilitators. The service does not have arbitration or directive powers. When a complaint is supported, the CRO will work with the complainant and the dentist in an attempt to resolve the matter. The complainant is able at any time to contact the HSC office or seek legal advice. The ADAVB liaises closely with the HSC on dental complaints and has often been able to assist in resolution of such matters.

Below is a table of the total number of phone calls, written complaints and AHPRA notifications received by the ADAVB CRO's in 2010, 2011 and 2012. The table demonstrates a spike in AHPRA notifications in 2011 which is largely due to the termination of Dental Practice Board of Victoria.

Year	Total Phone Calls	Written complaints	AHPRA Notifications
2010	3850	79	41
2011	4142	85	80
2012	4311	86	68

2. Cost effectiveness

The ADAVB does not wish to offer an in depth analysis of the cost effectiveness of AHPRA, however we would like to note the following points:

- The ADAVB assumes that registration fee increases are associated with larger management structures being put into place (as compared to prior arrangements), and the additional costs of setting up a new scheme
- With processes and knowledge now being refined post initial implementation, AHPRA staff are most likely better informed and cost efficiencies can be maintained through the retention of knowledgeable, skilled staff
- The AHPRA Annual report states that in the year to 30 June 2012 there were 464 complaints made about the organisation. 436 have been resolved with 28 pending. Major issues included:
    - Complaints related to registration fees
    - Complaints related to the English language requirements
    - Time to assess and process a new registration
    - Time to assess and process a renewal
    - Time to assess and process an overseas application or renewal
    - Lack of communication regarding registration
    - Due process of investigations not followed
    - Inadequate communication regarding a notification matter
    - Delay in investigation of a notification
- As illustrated above, the majority of complaints about AHPRA are in relation to the time taken for concerns to be addressed. As processes are refined further, the ADAVB expects that timeliness will improve

3. Regulatory efficacy

Efficacy can be defined as the quality of being successful in producing an intended result. AHPRA has a core responsibility to administer regulation with the aim of achieving policy objectives of the legislation. The objectives of the National Scheme are set out in the National Law (The Health Practitioner Regulation National Law, as in force in each State and Territory). These are:

- Protecting the public by ensuring only trained and qualified health practitioners, who practise safely and ethically, are registered to practise
- Supporting workforce mobility and quality health practitioner education and training
- Rigorously and fairly assessing all health practitioners for registration (including overseas applicants)

- Facilitating access to health services and supporting the development of a sustainable health workforce and
- Facilitating the provision of high quality education and training of health practitioners

The Australian National Audit Office, in its Administering Regulation Better Practice Guide 2007, outlines sound regulatory administration as administration that:

- supports the achievement of policy objectives
- increases administrative and compliance cost effectiveness
- strengthens confidence in the regulator

The ADAVB offers the following points on the administration of regulation by AHPRA:

Previous commentary

In March 2011, the ADAVB was invited to take part in a Roundtable discussion on health reforms which included an opportunity to comment on ADAVB member experiences with the new APHRA registration process.

An advocacy supplement in the ADAVB March 2011 newsletter outlined member feedback on the AHPRA registration processes, which was largely negative. The feedback centred on the difficulties faced by members in dealing with the registration process, the lack of communication from AHPRA and the timeliness of response to queries.

In the early stages of national registration implementation, AHPRA was not well regarded by the dental profession and the comments received by the ADAVB reflected this perception. The ADAVB is pleased to report that since the initial registration process, there has been minimal negative feedback from members in regard to the operation and efficacy of AHPRA registration processes. Furthermore, AHPRA has consulted closely with the ADA Inc. and the ADAVB on registration matters and responded appropriately to our queries regarding notification processes.

Duplication

In order to achieve both efficacy and efficiency, a regulatory process should not duplicate functions that are being undertaken by other organisations. The ADAVB is cognisant that there is potential for overlap of functions between the Australian Council on Safety and Quality in Health Care (ACSQHC), the HSC and AHPRA.

ACSQHC has developed safety and quality standards that guide practitioners on appropriate practice. The Dental Board of Australia also maintains standards for practitioners. There are multiple means through which dental practitioners' practice is monitored. The ADAVB sees it as unnecessary for any additional standards to be developed at this time.

In the consultation process for the Review of the Health Services Act, it was put forward that as part of registration renewal to AHPRA, practitioners be required to report on any complaints made against them. This is data already gathered by AHPRA and, subject to appropriate regulatory action to address privacy issues,

should be easily transferable to the HSC on a regular basis. It would be inefficient to repeat data collection when another body is already responsible for the maintenance of this data. The ADAVB supports processes that enable efficient regulatory administration in order to prevent unnecessary or duplicate reporting activity.

NSW data reporting

The ADAVB is aware that NSW reports differently in relation to notifications, and as such, their data is separate in AHPRA reporting. The ADAVB sees this as reducing regulatory efficiencies as it may cause issues with accurate comparison and analysis of data. We note that the Annual Report states that 'NSW data are provided in identified columns. There are some minor variations in the issue categories used in NSW; the NSW categories have been mapped to the categories used by AHPRA'. Creating consistency across each State and Territory in Australia would increase efficiency in reporting against notification issues categories, and come closer to realising the vision of a single set of professional standards measures for all jurisdictions.

Consistency across the health professions

The introduction of a national registration scheme intended to bring regulatory consistency across the health professions. The various boards, however, have introduced core Registration Standards with inconsistent requirements. For example, the health professions' Continuing Professional Development Registration Standards specify different CPD cycle lengths.

Medicine and Dentistry have a three year cycle in which to complete CPD requirements, whereas Physiotherapy has a one year cycle. We understand that Optometry has switched between a two and one year cycle since the introduction of the national scheme. The ADAVB sees the introduction of inconsistent core registration standard requirements as reducing regulatory efficacy. The ADAVB believes that a two year cycle is ideal. Creating consistency across the health professions in all core registration standard requirements would allow cross-profession comparison, analysis and drive evaluation of best practice in CPD audit activities.

In addition, a number of inconsistencies appear to apply in the conduct of the AHPRA notification system. These include:

Cross-disciplinary inequity, where only five of the 14 national registration boards have developed specific guidelines for keeping health records. Whilst the majority of the 14 national boards have specified maintaining adequate health records as a requirement under their codes of conduct, the existence of detailed health records guidelines for five of the 14 professions suggests that these five are subject to additional requirements despite the promise of a nationally consistent set of regulatory measures designed to protect public health and safety.

Cross-jurisdictional inequity, where Victoria is the only jurisdiction nationally (excluding NSW which conducts a separate co-regulatory scheme) to conduct dental panel hearings, and where notifications specifically dealing with dental records are an issue. There have been 14 notifications closed by AHPRA involving

dental records issues in Victoria, while none have occurred in Queensland, South Australia, Western Australia, ACT or Tasmania. The ADAVB believes that AHPRA legislation should be administered consistently across all jurisdictions.

Own motion cases regarding dental records, where practitioners who have not been the subject of a notification by a patient or patient representative, but whose records have been sighted by AHPRA personnel in the course of dealing with other matters, have been made subject to disciplinary proceedings rather than counselling or educational guidance. The ADAVB had assumed that own motion powers would be required where the public was at risk of harm from a practitioner. The ADAVB believes that such a heavy-handed approach is unnecessary as only technical requirements of a Dental Board guideline were in question. This does not appear to be consistent with good regulatory practice.

Readability of dental records, where the DBA guidelines have been interpreted by investigators and panels to mean that records should be readable and comprehensible to a third party. This is not a concept which is well understood by practitioners as it was not part of their training (historically) that this should be the case. Furthermore, there seems to be some evidence that investigators and trainers engaged by AHPRA are imposing an unreasonable expectation that extended prose records will be provided which will be comprehensible to a lay person (such as the patient or a lay investigator), rather than permitting efficient use of professional abbreviations and note taking conventions, able to be read by another dental practitioner. Given this, the ADAVB believes that the guidelines are either being misinterpreted or need to be amended.

Audit review consistency, where AHPRA investigators who are not dental professionals are making judgements about records intended to be exclusively accessed and understood by registered dental practitioners. Each of these investigators is at risk of interpreting the guidelines differently, and ADAVB has seen some cases in which unreasonable objections were raised about widely used abbreviations and notation conventions.

4. Protection of the public

Confusion about the role of AHPRA

An issue that continues to be brought to the attention of the ADAVB is public misunderstanding about the role of AHPRA, and confusion about the distinction between the HSC and AHPRA. This misunderstanding is relevant to both health professionals and members of the public. There is a misconception that AHPRA is a consumer complaints entity, rather than a professional standards body.

Whilst AHPRA is responsible for managing notifications, they do not resolve complaints about health systems or investigate concerns about health service providers. This is the role of Health complaints entities in each state and territory. There needs to be consistent, clear communication about the roles of each body and why a notifier should contact one in preference to the other.

Advertising breaches

The ADAVB is aware of a number of social media advertisements for dental treatments that are most likely in breach of the Dental Board of Australia Advertising Guidelines. The ADAVB is disappointed to see that the Advertising Guidelines are poorly enforced in the social media arena. The ADAVB sees the enforcement of the Guidelines as integral to the protection of the public.

Notification protocol complexity

The ADAVB feels that the notification protocols are extremely complex and that this may slow the regulatory process. The Australian National Audit Office, in its Administering Regulation Better Practice Guide 2007, states that a sound notification process:

- defines reporting responsibilities
- simplifies reporting
- simplifies information distribution
- ensures required event information is supplied
- provides appropriate officials with information quickly.

AHPRA should work to simplify the notification process and, as noted above, clarify the roles and responsibilities of each of the organisations with which it shares mutual interest.

Allocation of claims

The ADAVB is aware that AHPRA and the Victorian HSC meet regularly to discuss allocation of notification cases. Whilst the ADAVB is sure that every effort is made to make this a timely process, we are concerned that the confusion about which body to approach with a notification/complaint is decreasing efficiency in AHPRA's ability to protect the public.

Some of the comments provided in the ADAVB's submission to the review of the Health Services Act are relevant in this instance:

'A clearer pathway for whether a complaint is handled by AHPRA or the HSC needs to be established. The process in which HSC and AHPRA agree that a notification requires both of them to respond needs to be addressed as part of the establishment of clearer pathways. There is a need to introduce a process in which consumer complaints are addressed in parallel with disciplinary action rather than subsequent to it. This will mean that consumers are not left waiting for long periods before getting satisfaction of their compensation or apology concerns. We believe it may lead to procedural fairness issues if the disciplinary matter is not handled independently of the consumer complaint.'

Nature of the notification process

The ADAVB feels that the AHPRA notification process may have been distorted so that it shows some elements of a consumer complaints process. Comments from our

recent submission to the review of the Health Services Review Act highlight these points:

'The ADAVB considers it problematic that AHPRA notification processes, which are designed to assess a notification case against professional standards, also include some elements of a consumer complaints process.'

'The ADAVB has been concerned since the outset that the National Law seemed to treat notifiers as parties to a dispute rather than simply the source of advice requiring that a question of professional standards be investigated and potentially made subject to a hearing. We feel the proposed parallel processing of disciplinary and consumer cases may further confuse this issue, to the detriment of a fair hearing in the disciplinary arena. There needs to be more effective ways that communication is undertaken with the notifier. '

Impact on practitioners

The ADAVB is concerned that practitioners may not be afforded the same rights as consumers during a notification process due to the similarities of the process and a consumer complaints process. Whilst the ADAVB appreciates that the priority of the national scheme is protection of the public, the impact on the practitioner can (and should), be considered.

A number of studies have investigated the impact that a notification process can have on a health care practitioner. For example, it has been shown that medical practitioners who had received a complaint suffered a large amount of emotional stress and described feelings such as depression, anger, reduced confidence in clinical practice, shame and guilt[1]. Another study found that in a sample of 566 GPs with current medico-legal matters, 45% experienced psychiatric morbidity[2]. The negative psychological effects of a notification process are magnified by a drawn out process, in which a practitioner can wait up to nine months for a notification to be fully resolved.

In the interests of procedural fairness, the ADAVB believes that during a notification process, practitioners should be afforded the same rights as a complainant. This includes:

- rights to a fair hearing,
- detailed explanations of process and timeframes and
- advice and support

The ADAVB would like to note that it is not appropriate for an undertaking to be offered that relates to another matter, if the original notification matter has been dismissed. There is a clear risk of overregulation if practitioners are offered undertakings for other non-serious issues when the original notification issue is dismissed. Counselling of the practitioner on the issue is by all means appropriate, however, the offer of an undertaking is most likely unnecessarily severe. The offer of an undertaking may threaten the professionalism of the practitioner, and therefore their intention to re-register.

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1 Cunningham, W. (2004) The immediate and long-term impact on NZ doctors who receive complaints NZMJ 117:1198
2 Nash, L., Daly, M., Johnson, M., et al. (2007) Psychological morbidity in Australian doctors who have and have not experienced medico-legal matters: cross sectional survey Aust and NZ Journal of psychiatry, 41: pp917-925

In addition, undertakings must not be offered as alternatives to a stronger disciplinary measure so as to reduce workload for AHPRA investigators. This not only undermines the regulatory approach of AHPRA, but also demonstrates inconsistencies between the disciplinary recommendations made by AHPRA investigators.

The ADAVB has become aware of a situation in which an AHPRA investigator made a recommendation for an undertaking based on an assessment of practice that relied on testing against a comprehensive checklist. The checklist was much more specific and punitive than the information contained in the DBA guidelines. To develop a stringent checklist against guidelines defeats the purpose of maintaining 'guidelines'. As the ADAVB understands it, DBA guidelines are designed to be guiding principles that practitioners should strive to follow, not standards by which noncompliance is punishable. The ADAVB supports best practice for its members, however, it does not support a recommendation of an undertaking based on assessment against standards that are stricter than the published guidelines, especially when practitioners have never been provided with the checklist by which they are assessed.

Unregistered practitioners and risks to the Victorian public

The ADAVB believes that the practitioners posing the greatest risk to the public are those who are unregistered, as they are not bound by standards. In the interest of public safety, unregistered providers should be prohibited from practicing if serious allegations have been made against them. Unregistered providers are those that are not regulated under the national accreditation scheme. The ADAVB considers that the existing health practitioner registration provisions fail to adequately protect the community from the actions of unregistered persons who offer health services, or who employ registered persons to do so.

In our submission to the review of the Health Services Act we suggested that, as the HSC's role is to conciliate between parties rather than undertake disciplinary action, that AHPRA should also be tasked with addressing complaints made about unregistered providers and imposing restrictions on practice. This would mean a change to the national law rather than a change to the role of the HSC.

Notification Data

Dentistry is a complex field with 13 recognised specialist fields and various categories of practitioners, a number of whom have the capacity to offer similar or comparable services in selected areas. Registration data usefully identifiers each of these practitioner types however notification data does not yet distinguish whether, for example, a denture complaint relates to treatment provided by a dentist or a prosthetist.

The ADAVB therefore believes it would be extremely beneficial for notification data to be published by practitioner type instead of 'dental practitioners' as a whole category. This would allow the identification of which groups are responsible for the majority of notifications and what issues are generally the causes of notifications.

This data would be more helpful in conducting root cause analyses and in developing targeted education to reduce incidents. It would also be helpful to separate the data into State and national categories for a more accurate comparison and to target evidence based guidance in regard to important policy decisions and compliance measures.

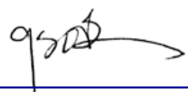
Collaborative relationship with the health professions

The ADAVB acknowledges that the transition period for AHPRA was complex and difficult with the merging of 85 separate registration bodies nationally. The progress made since the implementation of the new scheme has been generally positive. An open dialogue exists between senior management at the Victorian AHPRA office and the ADAVB. An open dialogue between AHPRA and the ADAVB is maintained through regular meetings. The meetings are designed to provide an opportunity to discuss ways to work together to benefit the membership including publishing information about AHPRA activities and highlighting gaps in dental professionals knowledge about AHPRA processes and standards.

Practice registration – branch practices

The ADAVB has received enquiries about dental practice registration requirements when opening branch practices. The ADAVB's understanding is that currently, only the principle dental practice needs to be registered with AHPRA. ADAVB believes that AHPRA should have the details of both practices so that the same level of scrutiny is afforded to both. ADAVB recommends that it should be a requirement for all practice sites to be registered to ensure that each practice is subject to regulatory measures.

If there are any queries about this submission, please contact Kate Jameson, ADAVB Policy and Research Officer on (03) 8825 4611.



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