MinterEllison

LAWYERS

26 October 2012

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FILE No:
DOC:
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EXPRESS POST
Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Dr Chadwick

Application for authorisation on behalf of the Australian Dental Association

Please find enclosed an application for authorisation, filed on behalf of the Australian Dental Association, relating to fee setting by dental practitioners within shared practices.

Enclosed is:

(a) Form A: Exclusionary Provisions and Associated Cartel Provisions;

(b) Form B: Agreements Affecting Competition or Incorporating related Cartel Provisions;

(c) a submission in support of the applications; and

(d) a cheque in the amount of $9,000 payable to the Australian Competition and Consumer Commission.

If you have any questions in relation to this authorisation or require any further information, please contact Justin Oliver on (07) 3119 6332.

Yours faithfully
MINTER ELLISON

Contact: Justin Oliver Direct phone: +61 7 3119 6332 Direct fax: +61 7 3119 1388
Email: justin.oliver@minterellison.com
Our reference: BMZR BJPO 40-7504424

Form A

Commonwealth of Australia

Competition and Consumer Act 2010 – subsections 88 (1A) and (1)

EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of Applicant:
(Refer to direction 2)

A91340

Australian Dental Association Inc. (**ADA**)

(b) Description of business carried on by applicant:
(Refer to direction 3)

The ADA is the peak professional organisation representing dentists.

Its functions include determining policy, generating expert advice, providing assistance to members, the promotion of oral health in the Australian community and providing a voice for dentistry both nationally and internationally.

(c) Address in Australia for service of documents on the applicant:

Justin Oliver
Minter Ellison
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

The making of or giving effect to contracts, arrangements or understandings between two or more dentists and/or dental specialists who practise in a shared practice as to fees to be charged for dental services provided in the practice.

(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:
(Refer to direction 4)

Please see **attached** submission.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Dental services of a general and specialist nature.

(d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Five years.

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

The authorisation is sought on behalf of all members of the ADA who are general practice dentists and dental specialists, current and future, who practise in a shared practice.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Refer to section 3(a) above.

4. **Public benefit claims**

(a) Arguments in support of application for authorisation:
(Refer to direction 6)

Please see **attached** submission.

(b) Facts and evidence relied upon in support of these claims:

Please see **attached** submission.

5. **Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 7)

The relevant markets are the markets for the provision of private general and specialist dental services in localised geographic regions.

Please see **attached** submission for more information.

6. **Public detriments**

(a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

Please see **attached** submission.

(b) Facts and evidence relevant to these detriments:

Please see **attached** submission.

7. **Contracts, arrangements or understandings in similar terms**

(a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

(b) Is this application to be so expressed?

Yes.

(c) If so, the following information is to be furnished:

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:
(Refer to direction 9)

Please see **attached** submission.

(ii) Where the parties to the similar term contract(s) are known - names, addresses and descriptions of business carried on by those other parties:
(Refer to direction 10)

Not known.

(iii) Where the parties to the similar term contract(s) are not known – description of the class of business carried on by those possible parties:

Refer to section 2(c) above.

8. Joint Ventures

(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

N/A

(c) If so, by whom or on whose behalf are those other applications being made?

N/A

9. Further information

(a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Justin Oliver
Minter Ellison
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

e-mail: justin.oliver@minterellison.com

Tel: (07) 3119 6332

Dated 26 OCTOBER 2012

Signed on behalf of the applicant

(Signature)

Justin Paul Oliver
(Full Name)

Minter Ellison Lawyers
(Organisation)

Partner
(Position in organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose of, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

   In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

   Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.

3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.

4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

   In providing these details:

   (a) to the extent that any of the details have been reduced to writing, provide a true copy of that writing; and

   (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.

5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.

8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 – subsections 88(1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of Applicant:
(Refer to direction 2)

A91341

Australian Dental Association Inc. (**ADA**)

(b) Short description of business carried on by applicant:
(Refer to direction 3)

The ADA is the peak professional organisation representing dentists.

Its functions include determining policy, generating expert advice, providing assistance to members, the promotion of oral health in the Australian community and providing a voice for dentistry both nationally and internationally.

(c) Address in Australia for service of documents on the applicant:

Justin Oliver
Minter Ellison
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 2)

The making of or giving effect to contracts, arrangements or understandings between two or more dentists and/or dental specialists who practise in a shared practice as to fees to be charged for dental services provided in the practice.

(b) Description of those provisions of the contract, arrangement or understanding described at 2(a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

Please see **attached** submission.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Dental services of a general and specialist nature.

(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Five years.

3. Contract, arrangement or understanding

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

The authorisation is sought on behalf of all members of the ADA who are general practice dentists and dental specialists, current and future, who practise in a shared practice.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Refer to section 3(a) above.

4. Public benefit claims

(a) Arguments in support of authorisation:
(Refer to direction 6)

Please see **attached** submission.

(b) Facts and evidence relied upon in support of these claims:

Please see **attached** submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restriction):
(Refer to direction 7)

The relevant markets are the markets for the provision of private general and specialist dental services in localised geographic regions.

Please see **attached** submission for more information.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understand, on the prices of the goods or services described at 2(c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

Please see **attached** submission.

(b) Facts and evidence relevant to these detriments:

Please see **attached** submission.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

(a) Is this application to be so expressed?

Yes.

(b) If so, the following information is to be furnished:

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:
(Refer to direction 9)

Please see **attached** submission.

(ii) Where the parties to the similar term contract(s) are known – names, addresses and descriptions of business carried on by those other parties:

Not known.

(iii) Where the parties to the similar term contract(s) are not known – description of the class of business carried on by those possible parties:

Refer to section 2(c) above.

8. Joint Ventures

(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

(b) If so, are any others applications being made simultaneously with this application in relation to that joint venture?

N/A

(c) If so, by whom or on whose behalf are those other applications being made?

N/A

9. Further information

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Justin Oliver
Minter Ellison
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

e-mail: justin.oliver@minterellison.com

Tel: (07) 3119 6332

Dated 26 OCTOBER 2012

Signed on behalf of the applicant

(Signature)

Justin Paul Oliver
(Full Name)

Minter Ellison Lawyers
(Organisation)

Partner
(Position in Organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

   In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.
   Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.

3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.

4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provision of the contract, arrangements or understanding that are, or would or might be, cartel provision. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

   In providing these details:

   (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and

   (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.

5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangements or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.

8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

AUSTRALIAN DENTAL ASSOCIATION INC

SUBMISSION IN SUPPORT OF APPLICATION FOR AUTHORISATION UNDER SECTION 88(1) OF THE COMPETITION AND CONSUMER ACT 2010

1. Introduction

1.1 The Australian Dental Association Incorporated (**ADA**) is the peak professional organisation representing dentists.

1.2 It is a national organisation with branches in all states and territories. Membership is voluntary and over 90% of dentists in Australia are members.

1.3 The ADA has two main aims:

(a) the encouragement of the health of the public; and

(b) the promotion of the art and science of dentistry.

1.4 The functions of the ADA include:

(a) maintaining a national body representing organised dentistry in Australia (the Federal Council of the Australian Dental Association Inc. and its Federal Executive);

(b) maintaining a national headquarters for the Association;

(c) managing the Association's finances;

(d) determining policy, and generating expert advice through the Association's Committees;

(e) conducting seminars and workshops for policy generation;

(f) providing administrative support for the work of the Federal Council, Federal Executive and Committees;

(g) maintaining a continuing communication with the membership;

(h) maintaining the international relationships of the Australian dental profession;

(i) responding to enquiries by the general public and other organisations in Australia and overseas; and

(j) maintaining the records of Association activities and history.

1.5 The business of the Association is managed by the Federal Council which consists of seventeen Councillors together with the President of each Branch or his/her nominee. There are five Councillors from New South Wales, three from Victoria, one from the Northern Territory and two from each of the other State Branches.

1.6 Federal Executive consists of five members elected from Federal Council and is subject to the general control and direction of Federal Council.

2. The Application

2.1 This application for authorisation is made by the ADA on behalf of members who are general practice dentists and dental specialists (current and future) who practice in a 'shared practice'.

2.2 A 'dentist' is a primary healthcare professional registered with the Dental Board of Australia, educated and specialising in the care of teeth, gums, bone support and the mouth. Dentists identify and treat dental diseases as well as provide preventative oral health services for teeth. General practice dentists provide dental care to the public in both private and/or public sector dental health services. Dental specialists provide specialised services and include Endodontists, Oral and Maxillofacial Surgeons, Orthodontists, Paediatric dentists, Periodontists, Prosthodontists, Oral Pathologists, Forensic Odontologists, Special Needs dentists, Public health dentists, Oral Medicine specialists and oral surgeons and Dental Radiologists.

2.3 A 'shared practice' is a type of dental practice that typically has the following features:

(a) two or more dental practitioners who may *but do not necessarily* practise in a partnership;

(b) shared staff including dental hygienists, oral health therapists, administrative and support staff;

(c) treatment of patients of other members of the practice;

(d) shared dental records;

(e) shared premises and/or satellite offices;

(f) a shared practice name;

(g) a common reception;

(h) shared dental equipment and supplies; and

(i) joint advertising.

2.4 Shared practices may also have:

(a) common billing and fee collection and other financial functions;

(b) common policies and procedures; and/or

(c) a common service entity.

2.5 Authorisation is sought to permit dentists practising in a shared practice to agree on fees to be charged to patients by the dentists in the practice. Specifically, the application relates to the making of or giving effect to contracts, arrangements or understandings between two or more dentists and/or dental specialists who practise in a shared practice as to fees to be charged for dental services provided in the practice.

2.6 The application for authorisation extends to all contracts, arrangements or understandings in similar terms to the proposed conduct, to the extent that giving effect to the proposed conduct results in contracts, arrangements or understandings in similar terms.

2.7 The applicant is seeking authorisation under both the state and territory competition codes as well as the *Competition and Consumer Act 2010* (Cth) (**CCA**).

3. Previous authorisation

3.1 The ACCC granted authorisation in similar terms on 10 December 2008 (no. A91094 and A91095). This authorisation is due to expire on 28 February 2013. This application seeks authorisation for this conduct for a further five years.

3.2 The ADA's previous authorisation application identified a range of public benefits associated with the shared practice structure. In particular, the ADA highlighted benefits relating to:

(a) availability of dental services;

(b) continuity of patient care;

(c) quality of dental services;

(d) range of dental services; and

(e) efficiency in the provision of dental services.

3.3 The benefits associated with the continuity, quality and range of dental care are qualitative in nature, and difficult to quantify through statistical evidence. However, the ADA's most recent practice surveys show that, in the years since the ACCC granted the current authorisation:

(a) the number of dental practitioners has increased; and

(b) there has been a modest but material increase in the number of dentists practising in an 'associate' structure (which is analogous to a shared practice structure).

3.4 At the same time, the annual rate of increase in dental fees has been in decline since the current authorisation was granted.

3.5 The survey material available to the ADA, which is discussed in further detail below, indicates that:

(a) the shared practice structure is popular among dental practitioners, and has grown in popularity since the ACCC's previous authorisation was granted;

(b) there is a correlation between the growth in the use of the shared practice structure and the number of dentists in practice; and

(c) the rate of increase in dental fees has declined.

3.6 The ADA submits that the existence of the shared practice structure promotes the public benefits described in this submission. The evidence available to the ADA also indicates that there are no detriments to the public resulting from the setting of fees within shared practices.

3.7 As outlined below, the ability to determine fees is an essential ingredient of a shared practice structure. The effect of this authorisation is to allow such practices to operate without requiring practitioners to incorporate or enter into partnership, thereby enhancing the ability of dentists to operate in a shared practice, and promoting the associated benefits to the public.

4. Market definition

4.1 The applicant submits that the relevant markets are the markets for the provision of private general and specialist dental services in localised geographic regions. This submission was accepted by the ACCC in the previous grant of authorisation on 10 December 2008 (at paragraph 6.3 of the Final Determination).

5. Public Benefits

5.1 In summary, shared practices generate public benefits in four main areas:

(a) availability and continuity of patient care;

(b) quality and range of dental services;

(c) efficiency in the provision of dental services; and

(d) retention of dental practitioners in the workforce.

Each of these is discussed in further detail below.

Availability and continuity of patient care

5.2 The shared practice structure helps to improve availability, continuity and consistency of patient care, facilitating access to patient information and records within the dental

practice. Dentists in a shared practice are able to effectively 'cover' for each other so that patients can see other dentists in the practice if they require dental services and their regular dentist is unavailable. Having more than one dentist in the practice also increases the chance that a patient will be able to be seen quickly in an emergency situation.

5.3 A shared practice structure allows patients to embark upon a course of treatment with certainty regarding the availability of services and fees, as shared practices allow cross-utilisation of other dentists within the practice for a particular patient. For example, if a patient requires a particular type of dental work, in which one of the dentists who is not the patient's usual dentist specialises, it is possible to include treatment by that dentist in the treatment plan while providing certainty about the fees for that work at the outset so that the patient can provide informed financial consent.

5.4 These co-operative arrangements ensure continuity of care and encourage shared responsibility for ensuring that quality of patient care is maintained over time. The co-operative approach inherent in a shared practice may be disturbed by differential fees. Differential fees may also create real and/or perceived barriers for patients. From a patient's perspective, the shared practice is one business. It is consistent with this perception for dentists operating in such practices to have the ability to agree fees for the practice. It would also potentially inconvenience patients and interrupt patient care if a patient could only afford to access dental services from one dentist within the practice and not from others.

Quality of dental services

5.5 Shared practices promote a culture of teamwork and improve the quality of dental services available to patients. They encourage high standards of patient care as the members of that practice can readily consult on all aspects of patient care. The ability to work as part of a team within a shared practice also gives dentists greater access to peer advice and review, clinical expertise and the camaraderie of other dentists. It also increases the likelihood of a dentist within the practice having expertise or specialised knowledge in a particular area of clinical practice. For example, although all dentists in the practice may be general practitioners, one may have a particular interest in crown and bridge work and may be able to provide assistance to his/her colleagues in relation to any crown and bridge work which their patients may require. This is particularly important for less-experienced dentists and will help improve standards of patient care.

Efficiency in the provision of dental services

5.6 Allowing dentists to agree fees in a shared practice has improved the efficiency of dental services, as practices have been able to share costs and utilise economies of scale in the purchase of major equipment. The emergence of dental practices allowing dentists to share the costs of practice such as leasing equipment, rent, laboratory, depreciation,

postage and stationery has coincided with relative decreases in expenses of private dental practice in 2007-2010 as compared to 2004-2007.[1]

5.7 Ultimately, cost savings increase the efficiency of dental practice and lower the costs of providing dental care to patients. Since authorisation was granted in 2008, the rate of fee increases for all dental services in Australia has decreased in every financial year to 2011.[2] Further, providing access to equipment 'in-house' removes the need for patients to make another appointment to see another health practitioner, thereby eliminating 'double handling' of the patient and ensuring that the patient's condition is diagnosed and treated in a timely manner.

5.8 Shared practices provide an alternative practice structure to the large scale 'corporate' model of dental practice, which in many cases is directed towards maximising returns to shareholders, rather than the dentists operating within the practice.

Attraction and retention of dental practitioners in the workforce

5.9 Shared practices have improved the availability of dental services for patients by providing increased flexibility in practice structures, attracting more dentists to the profession and allowing the profession to retain its workforce for longer.

5.10 In particular, the shared practice structure provides an additional means by which dentists:

(a) who are seeking to balance work and family commitments; and

(b) who are approaching the end of their careers,

can remain in practice, if necessary on a part time basis.

5.11 There is a growing number of dental practitioners who are seeking to practise on a part-time basis in order to balance work and family commitments. The majority of practitioners in this category are women. Between 2000 and 2009, the number of women in dental practice increased by 89.5% (from 2,042 in 2000 to 3,869 in 2009) compared to a 16.3% increase in the number of male dentists over the same period (from 6,891 to 8,013).[3] The proportion of dentists working part-time has also increased significantly from 23.0% in 2000 to 31.4% in 2009.[4] In 2009, as the number and proportion of female

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[1] Barnard PD. (2010) 'Dental Practice Survey 2010: Financial aspects of private practice', NSW: Australian Dental Association Inc.

[2] See Appendix A: Table 4.

[3] Chrisopoulos S. & Nguyen T. (2012) 'Trends in the Australian dental labour force, 2000 to 2009: Dental labour force collection, 2009', Dental Statistics and Research Series no. 61. Cat. No. DEN 218. Canberra: AIHW.

[4] See Appendix A: Table 2.

dentists increased, 35.5% of female dentists worked part-time compared with 22.4% of male dentists.[5]

5.12 There has also been an increase in the proportion of practising dentists over the age of 50 between 2000 and 2009 (from 31.8% in 2000 to 38.8% in 2009). There has been a corresponding drop in the proportion of dentists in the 40 to 49 years age group (31.7% in 2000 to 23.4% in 2009).[6] A survey of dentists in New South Wales suggests that in 2010, coinciding with the rising average age of dentists (particularly in the 50-59 years age group), dentists are increasingly staying in the workforce longer by transitioning into retirement through part-time work.[7]

5.13 Other than practising in a shared practice structure, dentists who wish to work on a part time basis have few opportunities to do so, other than as an employee. Practice in partnership is less attractive to a part time dentist, as the sharing of costs and revenues between full time and part time practitioners is more complicated. In contrast, the ability to practise in a shared practice structure enables a part time practitioner the flexibility to continue to practise as an owner, while also delivering better continuity of care and predictability of fees for patients.

5.14 There also remain significant shortages of dentists in rural and remote areas across Australia. In 2009, there were 23.1 practising dentists per 100,000 population in *Remote/Very remote* areas compared with 62.4 in *Major cities*, a ratio that has remained relatively consistent since 2000.[8] The ability to practise in shared practice structures in rural and remote areas has the potential to attract and retain practitioners in these areas by providing greater access to peer support and facilitating the sharing of costs without requiring practitioners to enter into partnership or practise only as an employee.

6. The authorisation is essential to generating these benefits to the public

6.1 Authorisation is sought to permit dentists and dental specialists in a shared practice to agree fees to be charged by the practice. A 'shared' practice cannot exist without the ability to agree on fees to be charged by the practice. The notion that a dentist could practise in a shared practice with the characteristics outlined in part 2 above, and yet compete with the other dentists in that practice on fees, is a contradiction in terms.

6.2 Without authorisation, the only 'shared' practice structure that will be permitted under the CCA will be partnership. While partnership is a viable alternative in many cases, it is a structure which also has certain features that make it less attractive to dental practitioners,

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[5] Chrisopoulos S. & Nguyen T. (2012) 'Trends in the Australian dental labour force, 2000 to 2009: Dental labour force collection, 2009', Dental Statistics and Research Series no. 61. Cat. No. DEN 218. Canberra: AIHW.

[6] Chrisopoulos S. & Nguyen T. (2012) 'Trends in the Australian dental labour force, 2000 to 2009: Dental labour force collection, 2009', Dental Statistics and Research Series no. 61. Cat. No. DEN 218. Canberra: AIHW.

[7] Schofield D., Fletcher S., Page S. and Callander E. (2010) 'Retirement intentions of dentists in New South Wales, Australia', Human Resources for Health 2010, 8:9, *www.human-resources-health.com/content/8/1/9*.

[8] See Appendix A: Table 1.

for example, the acceptance of liability for the actions of other partners in the practice. It is also a practice structure that is less suited to part time practitioners, due to increased complexities relating to the sharing of costs and revenues with full time partners.

6.3 The concept of a 'shared' practice, which is the subject of this application, is not limited to partnership, permitting more flexible practice structures to be utilised and promoting the public benefits identified above.

6.4 The data available to the ADA indicates that dentists are taking advantage of the benefits offered by the shared practice structure. Survey data showing changes in the distribution of dentists by practice type indicates a modest but material take up in the 'associate' structure in recent years. The data shows an increase in the percentage of associate dentists from 15% in 2007 to 18% in 2010.[9]

7. Public Detriments

7.1 The applicant submits that the conduct which is the subject of the current authorisation has resulted in no public detriment since authorisation was first granted in 2008 and, if authorisation continues, will not give rise to public detriment in the future.

7.2 This application for authorisation is confined only to the making of and giving effect to contracts, arrangements or understandings between two or more dentists and/or dental specialists who practise in a shared practice as to fees to be charged for dental services provided in that practice. This conduct will continue to be authorised only within shared practices, and will not apply to conduct between other practices. There will be no lessening of competition between dental practices as a result of this conduct.

7.3 Dentists work in diverse, complex and overlapping business structures. For dentists and dental specialists operating in the shared practice structure, authorisation has permitted dentists working in a shared practice to agree on the fees that the practice charges patients, irrespective of their legal structure. Under other business structures including partnerships and incorporated entities, dentists can collectively agree on the price they charge patients. The authorisation will continue to ensure that the CCA does not prevent a shared practice from existing in another form, namely a shared practice between two or more dental practitioners which possess the characteristics outlined at part 2 above. It will provide dentists with increased flexibility to choose the business structure that best suits their needs.

7.4 There is nothing to suggest that authorisation has resulted in reduced competition across the dental industry or that a further authorisation would have this effect. The number of dentists per capita has risen steadily between 2000 and 2009 across all geographical areas in Australia. While there has been an increase in the number of dentists in 'associated'

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[9] Barnard PD. & Shao JH. (2012) 'Australian Dental Practice Survey 2010: Report and Tables', NSW: Australian Dental Association Inc.

practices since 2007, this has been surpassed by the rate of increase in the number of dentists per capita which has surpassed the rate of population growth in this period.[10]

7.5 Importantly, fee levels have not increased significantly since authorisation was granted in 2008. In fact, the rate of fee increases for all dental services has decreased in every financial year from 2008 to 2011. Between the 2003 and 2008 financial years, fee levels increased consistently at a rate between 5 and 6% per annum. By contrast, the overall increase in fees from 1 July 2010 to 1 July 2011 was 1.9%.[11] This is the lowest increase in fee levels over the preceding ten years.[12] The evidence clearly points to a decline in the rate of fee increases for dental services in Australia during the period of authorisation. In this context, there is no reason to suggest the renewal of authorisation would affect fee levels negatively in the years to come.

8. Period of Authorisation

8.1 The ADA submits that further authorisation for a period of five years is appropriate.

9. Conclusion

9.1 The ADA submits that the authorisation of fee setting within a shared practice produces a net benefit to the public. Specifically:

(a) shared practices promote a number of public benefits including improving the availability of dental services, providing continuity of patient care, increasing the quality of dental services available within a practice, encouraging efficiency in the provision of dental services and attracting and retaining dental practitioners in the workforce;

(b) there has been no public detriment since authorisation in 2008 and, if authorisation is continued, there will be no public detriment in the years to come.

Accordingly, the ADA requests that authorisation be granted in the terms sought.

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[10] See Appendix A: Table 1 and paragraphs 4 to 7.

[11] See Appendix A: Table 4.

[12] See Appendix A: Table 4.

Appendix A: Statistical information

Introduction

1. Since the early 1980s all state and territory dental boards conducted annual dental workforce surveys and collected data about the dental workforce. The Australian Research Centre for Population Oral Health (**ARCPOH**) was the research body appointed by the boards to report on the data. Its most recent report relates to statistical data from 2009.

2. From 2010 the registration process and the collection of statistical data has been conducted by the Dental Board of Australia and the Australian Health Practitioner Regulation Authority (**AHPRA**). AHPRA has not provided a comparable report to allow a detailed comparison with ARCPOH's 2009 statistical data.

3. The ADA has conducted surveys on various aspects of dental practice including dental fees, the financial aspects of private practice and the provision of services by dental practices.

Supply of dental services in the market[13]

4. Based on the most recent consolidated statistical data compiled in 2012, from 2000 to 2009, the total number of dentist registrations increased from 10,609 in 2000 to 13,611 in 2009, an overall increase of 28.3%. Allowing for multiple registrations, those working overseas and those not employed in the dental labour force, the estimated number of practising dentists increased from 8,992 in 2000 to 11,882 in 2009, a 32.1% increase.

5. The number of dentist registrations per 100,000 population increased from 55.4 to 62.0 between 2000 and 2009. Also during this period the number of practising dentists increased from 46.9 to 54.1 dentists per 100,000 population, a 15.4% increase (see Table 1). This was greater than the increase in the Australian population which was 14.6% over the same period.

6. Between 2000 and 2009, there was a 9.1% increase in the number of dentists per 100,000 population in *Outer regional* areas, an 11.6% increase in *Major cities,* a 26.5% increase in *Inner regional* and a 39.5% increase in *Remote/Very remote* areas.

7. Across geographical areas, there was considerable variation in the rate of practising dentists. In 2009, there were 62.4 practising dentists per 100,000 population in *Major cities*, decreasing to 23.1 in *Remote/Very remote* areas, a ratio that has remained relatively consistent since 2000 (see Table 1).

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[13] Chrisopoulos S. & Nguyen T. (2012) 'Trends in the Australian dental labour force, 2000 to 2009: Dental labour force collection, 2009', Dental Statistics and Research Series no. 61. Cat. No. DEN 218. Canberra: AIHW.

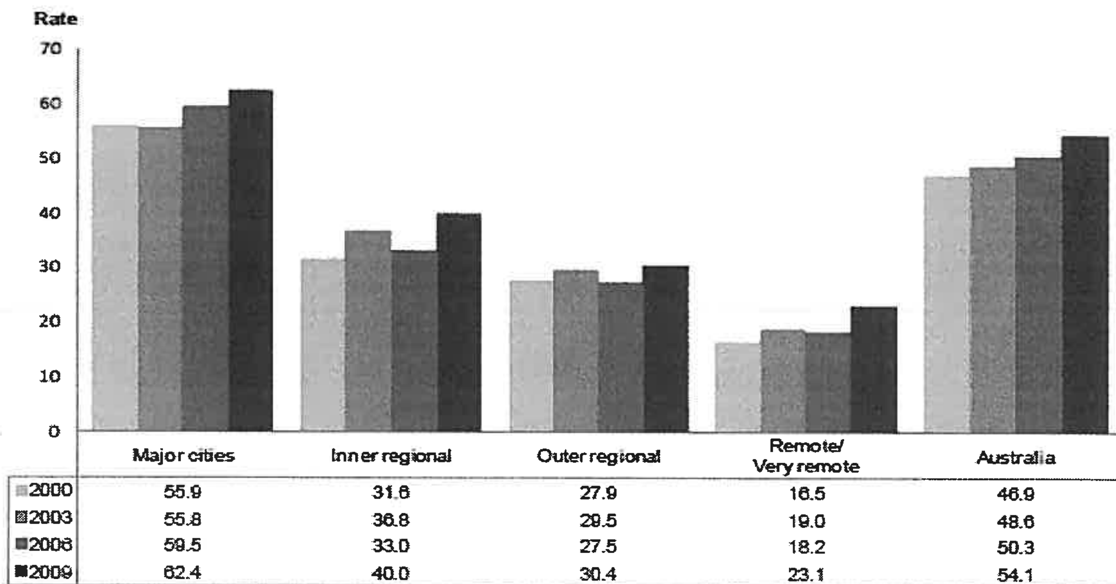

Table 1: Number of practising dentists per 100,000 population by remoteness area of main practice, 2000 to 2009

Demographic characteristics

8. The table below sets out the statistical trends between 2000 and 2009 in relation to the age and gender composition of dental practitioners.[14]

	Sector			
	Public	Private	Both	Total
Number practising				
2000	1,207	7,178	607	8,992
2003	1,278	7,651	749	9,678
2006	1,389	8,269	746	10,404
2009	1,546	9,453	884	11,882
Per cent female				
2000	36.3	19.9	31.1	22.9
2003	42.5	22.9	33.5	26.3
2006	44.3	25.7	36.9	29.0
2009	45.6	29.8	39.9	32.6
Average age (years)				
2000	43.4	44.8	40.2	44.3
2003	43.9	45.1	40.8	44.6
2006	44.3	45.5	42.3	45.1
2009	45.6	45.4	42.7	45.2
Average total hours worked per week				
2000	36.3	39.6	41.6	39.3
2003	35.5	39.0	40.7	38.7
2006	35.0	38.8	41.2	38.5
2009	34.8	37.6	39.8	37.4
Per cent working part time				
2000	23.7	22.8	23.4	23.0
2003	28.6	25.1	22.8	25.4
2006	33.4	26.6	23.0	27.2
2009	35.0	31.2	27.6	31.4

Table 2: Practising dentists by sector, sex, age and hours worked, 2000 to 2009

[14] Chrisopoulos S. & Nguyen T. (2012) 'Trends in the Australian dental labour force, 2000 to 2009: Dental labour force collection, 2009', Dental Statistics and Research Series no. 61. Cat. No. DEN 218. Canberra: AIHW.

Practice characteristics[15]

9. The majority of Australian dentists work in private practice. Between 2000 and 2009, the majority of dentists (between 79.1% in 2003 and 79.8% in 2009) only practised in private settings, while between 6.8% and 7.7% worked in both public and private settings.

10. There is a significant amount of diversity in the business structures utilised by dentists in private practice. These include:

    (c) sole practitioner;

    (d) a single dentist trading as an incorporated entity;

    (e) one of two or more shareholder dentists in an incorporated entity;

    (f) employment as an assistant in a practice i.e. being employed and receiving a salary from the practice; and

    (g) shared practices including:

        (i) partnership of two or more practitioners where expenses are shared and profits and losses allocated in agreed proportions; and

        (ii) dentists practising in conjunction with one or more other dentists, charging separately in accordance with an agreed fee schedule and undertaking other activities described in clause 2.4 (dentists practising in such a structure are often classified as being an 'associate').

11. In *most* of these structures where there are two or more practitioners, it is permissible for the practice to charge common fees.

12. Sole practitioners made up the largest percentage of practising dentists throughout 2000-2009 but the percentage of sole practitioners dropped significantly throughout these years. The percentage of practising dentists in other business structures has remained relatively steady throughout this period (see Table 3).

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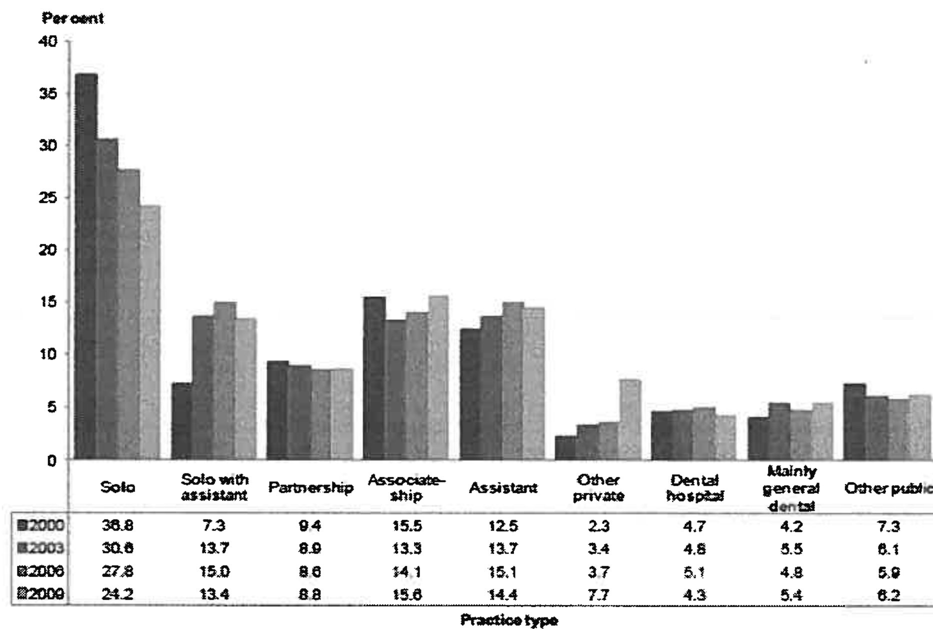
[15] Chrisopoulos S. & Nguyen T. (2012) 'Trends in the Australian dental labour force, 2000 to 2009: Dental labour force collection, 2009', Dental Statistics and Research Series no. 61. Cat. No. DEN 218. Canberra: AIHW.



	Solo	Solo with assistant	Partnership	Associate-ship	Assistant	Other private	Dental hospital	Mainly general dental	Other public
2000	36.8	7.3	9.4	15.5	12.5	2.3	4.7	4.2	7.3
2003	30.6	13.7	8.9	13.3	13.7	3.4	4.8	5.5	6.1
2006	27.8	15.0	8.6	14.1	15.1	3.7	5.1	4.8	5.9
2009	24.2	13.4	8.8	15.6	14.4	7.7	4.3	5.4	6.2

Table 3: Percentage of practising dentists by practice type at main location, 2000-2009

13. Shared practices exist in more than one of the 'practice types' identified in Table 3, as dentists who practise in a shared practice may characterise themselves within one of the other 'practice types'.

Fee levels[16]

14. As at 1 July 2011, there were considerable variations in the levels of fees charged within and between states. Overall, the Northern Territory and the ACT had the highest proportion of dentists charging the highest fees among the states and territories. South Australia had the lowest proportion of dentists with the lowest fees than any other state or territory.

15. On the basis of 70 items surveyed, as at 1 July 2011, 11 items had similar fees charged between the state capital and the rest of state dentists. There were 10 items where the state capital dentists charged slightly higher than the rest of state dentists and 49 items where the rest of state dentists charged higher than the state capital dentists.

16. The overall increase in fees charged by dentists from 1 July 2010 to 1 July 2011 was 1.9%. Significantly the rate of increase in fees has been decreasing steadily since 2008 (from 5.5% to 1.9%). Table 4 shows the yearly increase in fees by categories from 2002 – 2011.

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[16] Tran D. & Barnard PD. (2011) 'Dental Fees Survey 2011', NSW: Australian Dental Association Inc.

Category	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Diagnostic Services	0.7%	3.5%	3.9%	3.3%	6.0%	4.0%	6.5%	4.1%	3.1%	1.2%
Preventive Services	4.1%	3.7%	5.5%	2.9%	5.5%	4.8%	4.7%	4.0%	1.4%	1.3%
Periodontics	3.5%	9.6%	2.6%	5.6%	7.7%	6.6%	6.8%	*	[-19.9%]	[-19.0%]
Oral Surgery	3.4%	8.5%	7.2%	6.0%	7.5%	6.5%	6.6%	5.2%	4.0%	3.5%
Endodontics	4.5%	5.4%	5.5%	4.5%	5.1%	6.6%	6.4%	3.7%	4.4%	2.4%
Restorative Dentistry	4.3%	6.0%	6.5%	4.1%	6.7%	5.7%	5.4%	5.6%	2.7%	2.3%
Prosthodontics	4.1%	4.1%	5.1%	6.3%	5.6%	5.3%	5.6%	3.3%	3.4%	1.9%
Orthodontics	5.1%	13.3%	2.2%	-0.4%	4.0%	7.4%	6.1%	-0.2%	0.9%	12.8%
General	3.7%	5.0%	8.2%	2.3%	6.5%	4.7%	4.5%	4.6%	2.3%	2.2%
All services surveyed	3.9%	5.9%	5.5%	5.3%	6.0%	5.0%	5.5%	4.0%	2.9%	1.9%

Table 4: Yearly increase in dentists' fees by category since 2002