

The Australian Dental Association (ADA) is seeking authorisation for the making of and giving effect to contracts, arrangements and understandings between two or more dental practitioners in relation to the fees to be charged for dental services provided within shared practices.

Self-regulation: high cost of dental services

The majority of Australian dentists (83%) work in a private dental practice¹ under a 'fee for service' and 'for-profit' business model. Australian consumers have higher out-of-pocket dental expenses than those in comparable countries², with private sector dentists also charging patients a co-payment for the gap between any Medicare rebate and the dentist's fee for private and some public dental services.³

Australian consumers are not only burdened by the high cost of dental services, but also the potential for overtreatment⁴ and overcharging - enabled by the clinical freedom afforded by the absence of national guidelines on clinical diagnosis and treatment, the lack of dental fee regulation and the absence of a national recommended dental fee schedule.⁵ For private health insurance patients, the reported salary structure for dentists employed by some dental corporations (e.g. incentives for high value work, quotas, commissions) may also lead to overservicing and the maximisation of rebates – being discordant with the objectives of preventative minimally invasive dentistry.⁶

Could the ADA's proposed 'fee agreements' result in an increase in fees?

Given this self-regulation, the ACCC should clarify the criteria that the ADA propose will be applied in determining how the fees to be charged within shared practices will be 'agreed upon'. Could the 'agreement' potentially result in an increase in any current fees for any services? The public detriments of any potential for a fee increase will outweigh any consumer benefits of [high/higher] price certainty, particularly in the absence of price displays.

¹ Australian Institute of Health & Welfare. 'Oral health and dental care in Australia' 2023. <https://www.aihw.gov.au/reports/dental-oral-health/oral-health-and-dental-care-in-australia/contents/dental-workforce>

² Parliamentary Report on *The Provision of and Access to Dental Services in Australia*, 2023. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Dental_Services_in_Australia/DentalServices/Final_report

³ Sub 37.2, McGrath, D-L. Submission 37. *The Provision of and Access to Dental Services in Australia*, 2023. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Dental_Services_in_Australia/DentalServices/Submissions

⁴ Holden ACL, Adam L, Thomson WM. Overtreatment as an ethical dilemma in Australian private dentistry: A qualitative exploration. *Community Dent Oral Epidemiol.* 2021; 49: 201–208.

⁵ McGrath, D-L. Submission 37. *The Provision of and Access to Dental Services in Australia*, 2023. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Dental_Services_in_Australia/DentalServices/Submissions

⁶ *ibid*

Price Displays: transparency, consumer comparison, informed consent

While some stakeholders to this consultation suggest that the ACCC impose a condition that all dental clinics covered by the authorisation use price displays for common services, the ADA argue (20/06/24) that dental schedule item numbers are not reflective of the time or cost of the treatment involved and “therefore a matter for dental practitioners to assess how to price”.

However dentists may charge for items with the highest rebate for time involved (e.g. charging for extended/‘long’ consultations (e.g. items 015; 017] vs short [e.g. item 014]; and for ‘complex/difficult’ extractions [e.g. item 314] vs simple [item 311]). Without being made aware of these dental item subcategories via price displays, consumers are unable to question the fees they have been, or will be charged. Fees also vary widely between dentists, regardless of any material costs (e.g. check-ups).

Price certainty will only be beneficial if there is price transparency

Due to the high unknown cost of dentistry, consumers are unable to ‘shop around’ and compare dental fees before seeking treatment or a second opinion.

This lack of price transparency has clear public detriments; as a 2024 Australian Parliamentary Senate report⁷ on *The Provision of and Access to Dental Services in Australia* found that an increasing number of Australians avoid or delay visiting a dentist due to cost and that such fear and hesitation [2.13] arises from:

1. *dentists rarely advertising their prices*
2. *absence of standard fees for dental services*
3. *consumers not always being provided with a quote*
4. *some dentists charging different patients different amounts for the same service (as shown in private health insurance data)*
5. *significant variation in health fund rebates*
6. *health funds generally not publishing their rebate amounts*

These clear public detriments outweigh the proposed benefits of price certainty for consumers and demonstrate the need for price transparency in the form of price displays and the provision of itemised quotes for planned treatment.

⁷ Parliamentary Report on *The Provision of and Access to Dental Services in Australia*, 2023.
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Dental_Services_in_Australia/DentalServices/Final_report

ADA membership and consumer complaints handling and refunds

The proposed conduct in this authorisation involves the making of and giving effect to contracts, arrangements and understandings *where at least one party is a member of the ADA*.

However the ACCC should consider the right for all dental consumers to benefit from price certainty [*Competition and Consumer Act 2010*] regardless of the ADA membership status of a dental practitioner. In addition, the ADA membership status of dental practitioners is not always displayed within dental business premises.

Under extant ACCC Exclusive Dealings Authorisations (e.g. Notifications N9145; N92184), endorsed insurers may offer differing (lower) insurance premiums to members of the ADA Australian Dental Association (ADA). Such ‘preferred providers’ then appear to support the ADA through the payment of referral fees.⁸ ASIC Professional Registers also show that as an Australian Financial Services Authorised Representative of Guild Insurance, the ADA NSW, for example, are approved to provide general financial product advice to wholesale clients only.

ADA dentists may issue consumers who complain about their treatment with an ‘ADA Deed of Release’ prior to issuing them a refund.⁹ These confidential legal waivers do not offer compensation to fix dental treatment (no-fault) or enable a complaint to a statutory body.¹⁰

It is also unclear to consumers if subsequent ADA members (‘second dentists’) can correct the poor dental treatment of their ADA peers, as their comments and actions appear to have consequences for any settlement of grievances.¹¹ Given that consumers seek and pay for unbiased independent and confidential second-opinion consultations, this ADA ‘second dentist’ issue should be clarified and pre-disclosed to such consumers.

Given the high cost of dentistry, the handling of consumer complaints and the issuing of refunds (under CCA) is a significant issue, particularly given that Australian dentists have the highest rate of [non-vexatious¹²] complaints among the registered health professions, with most relating to poor dental treatment.¹³ That rate excludes informal complaints confidentially ‘settled’ by dental practitioners.

⁸ E.g. see: Guild Insurance <https://www.guildinsurance.com.au/professional/dentists>

⁹ Also see: Dennett, ADA NSW. The second dentist and patient dissatisfaction <https://riskhq.guildinsurance.com.au/home/the-second-dentist-and-patient-dissatisfaction>

¹⁰ Also see for e.g., submission 129.2 to the Inquiry into the *Administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law* https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AHPRA/Submissions

¹¹ Dennett (ADA NSW) Guild Insurance, *the second dentist and patient dissatisfaction*, <https://riskhq.guildinsurance.com.au/articledetails/the-second-dentist-and-patient-dissatisfaction> [29/07/24].

¹² There are no documents on “vexatious” notifications for 2010-2022 [AHPRA FOI Public Disclosure Log, Aug 2022, ref 38795]. An AHPRA funded 2018 Monash University study found ‘truly vexatious complaints are rare’.

¹³ Thomas, L. et al. ‘Complaints about dental practitioners: an analysis of 6 years of complaints about dentists, dental prosthetists, oral health therapists, dental therapists and dental hygienists in Australia’. *Australian Dental Journal*, 2018, 6: 285-293.

Dental fees and refund policies should be published and clearly displayed

Before the ACCC consider granting authorisation in this matter, the ACCC should:

- a) seek clarification on how the fees to be charged in shared practices will be agreed upon and consider the possibility of any increase in fees
- b) impose a condition on price displays for the benefit of consumers *
- c) clarify ADA member handling of consumer complaints and refunds (CCA).

*Dental fee price transparency is currently possible. Many dental schedule fee items reflect a time allocation based on anticipated degree of difficulty (e.g. long consultations, difficult extractions) and dentists schedule patient appointments in allocated timeslots according to an anticipated time for completion.

Economic progress: In future all dental fees and private health insurer rebates should be published and clearly displayed within all dental businesses

At the same time, the ACCC should consider the *Inquiry into the Provision of and Access to Dental Services in Australia* (2023) findings on the impact of the current lack of dental fee price transparency on wider society.¹⁴ Given these detriments, price transparency for consumers will have public benefits of the achievement of the economic goals of efficiency and progress.¹⁵

To redress the current power imbalance for Australian dental consumers, all dental fees and insurer rebates (for preferred vs non-preferred providers) should be published and clearly displayed within all dental businesses¹⁶ - regardless of the ownership, affiliation, classification (shared or otherwise) or ADA membership status of staff. All consumers should also be afforded informed financial consent [*Competition and Consumer Act 2010*] via the provision of a printed dental treatment plan with itemised quotes – well before the day of planned dental treatment. The clear public benefits of such price transparency for consumers outweigh any concerns with transparency to competitors.

Further, the Australian Senate Committee report [6.46¹⁷] on the *Inquiry into the Provision of and Access to Dental Services in Australia* (2023) concluded that if any kind of Medicare-linked universal dental scheme was to be introduced in Australia, the current lack of regulation around pricing would need to be addressed.

¹⁴ Including ATO reports of \$171.3 million in 2021-22 on superannuation withdrawals for dental treatment; dental patients turning to hospitals and GPs for care they cannot afford in the for-profit private dental sector and consumers being offered 'buy now pay later' schemes to pay for treatment.

¹⁵ Re: see citation 9 in ACCC *Draft Determination* on ADA Application for revocation of AA1000638, August 2024.

¹⁶ ACCC *Price Displays*. <https://www.accc.gov.au/consumers/pricing/price-displays>

¹⁷ Parliamentary Report on *The Provision of and Access to Dental Services in Australia*, 2023.

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Dental_Services_in_Australia/DentalServices/Final_report