



**Coverage of the  
Medical Indemnity  
(Prudential Supervision and  
Product Standards) Act 2003**

**SUBMISSION  
TO TREASURY  
BY AUSTRALIAN DENTAL ASSOCIATION VICTORIAN BRANCH INC.**

**JANUARY 2006**



27 January, 2006

Treasury  
Insurance Access and Pricing Unit  
Attention: Medical Indemnity  
Langton Crescent  
CANBERRA ACT 2600

By email: [MIPSPScoverage@treasury.gov.au](mailto:MIPSPScoverage@treasury.gov.au)

## **Submission in response to Federal Treasury Discussion Paper “Coverage of the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003”**

### **Introduction**

The Australian Dental Association Victorian Branch Inc. (ADAVB) welcomes the opportunity to comment on this review of the provisions of the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 (the “Act”).

The ADAVB is the peak body for the dental profession in Victoria, representing over 90% of private practitioners and around 60% of public sector dentists in this State.

The ADAVB has a referral agreement with Guild Insurance Limited (Guild) for the provision of professional indemnity insurance to our members, and over 90% of members participate in this policy. The ADAVB is a Corporate Authorised representative of Guild in connection with this policy and we both administer member policy renewal and advise Guild and their solicitors on clinical aspects of claims.

Guild is a leading niche insurer of professional indemnity and other general insurances to allied health care practitioners in Australia. Guild is an APRA-regulated general insurer, and has been providing this form of insurance protection to its niche health care professions for over 40 years. Guild is privately owned by the Pharmacy Guild of Australia, and is the predominant liability insurer in this country of pharmacists, dental practitioners, chiropractors, physiotherapists, podiatrists, dieticians, osteopaths, orthotists and prosthetists, radiographers, rehabilitation providers and speech pathologists, among others.



The key issues as we see them relate to:

- The need for regulatory control and capital adequacy requirements to be maintained in the interests of avoiding another UMP or HIH situation, or indeed a worse situation, where the underwriting entity was domiciled offshore in a jurisdiction over which Australian regulators had no control or influence. (The questions being raised here seem almost to have ignored the recent high profile cases where the public was left in the lurch).
- The insurance premiums in dentistry are affordable and there is no problem of lack of availability of cover
- There are competing firms offering dental cover and so there is no lack of competition, nor is there a monopoly situation
- Differential premiums apply to employee practitioners in some circumstances.
- Removal of minimum contract amounts could potentially leave some practitioners underinsured and so expose the community to the risk that a treatment failure will not be compensable.

## **Background**

The ADAVB is aware that the ADA NSW Branch and Guild have also made submissions on this matter, and we concur with the key points made in those submissions. We share some common experience with the NSW Branch, including a long history of involvement in professional indemnity through relationships with medical defence organisations (historically) and insurers (currently). As the peak dental organisation in Victoria, we are well placed to respond to the Treasury Discussion Paper and to comment on the likely impact of proposed changes on our members, and by inference, other health professionals.

In Victoria, registered dental care providers are obliged as a condition of registration, to hold a current professional indemnity insurance contract. This has applied since the introduction of the Dental Practice Act 1999, which took effect on 1 July 2000. The Dental Practice Board of Victoria determined that a minimum cover of \$10m was required for practitioners to meet this obligation. Similar requirements are enshrined in Section 13 of the recently adopted Health Professions Registration Act 2005, which takes effect on 1 July 2007, and which applies to the twelve registrable health professions.

### ***“13. Professional indemnity insurance***

*(1) Without limiting a responsible board's powers under this Part, it may impose a condition on the grant or renewal of registration—*

*(a) that—*

*(i) the health practitioner must hold professional indemnity insurance; or*

*(ii) the regulated health services provided by the health practitioner must be covered by professional indemnity insurance; or*

*(iii) the health practitioner must be specified or referred to in professional indemnity insurance, whether by name or otherwise, as a person to whom the professional indemnity insurance extends even though the health practitioner is not a party to the professional indemnity insurance; and*



- (b) that the professional indemnity insurance must meet the minimum terms and conditions set out in the guidelines of the responsible board.*
- (2) If the applicant's arrangements satisfy the minimum terms and conditions set out in the guidelines of the responsible board, the responsible board must not—*
- (a) refuse to grant registration on the basis that the health practitioner's arrangements for professional indemnity insurance are in the form of insurance or a discretionary indemnity; or*
- (b) impose a condition on the registration of a health practitioner to require that the health practitioner's arrangements for professional indemnity insurance must be in the form of insurance or a discretionary indemnity.”*

An independent review of professional indemnity schemes offered by the ADA Branches in NSW, Victoria, South Australia and Tasmania, was conducted by Deloitte Trowbridge in 2004 (this review was also mentioned in the ADA NSW Branch submission). Key findings of this review were:

- The current arrangement with Guild Insurance Limited (GIL) has withstood the turmoil in the Australian professional indemnity (PI) market over the last 3 years
- It has delivered an adequately priced product on a continuous basis during this period to ADA members in participating States – while many other professions have had difficulty obtaining cover. Also, price increases which have occurred are not out of line with premiums charged to other professions.
- The current arrangement is open and responsive and has proven to be both administratively effective, and financially sound for the participating ADA Branches and their members
- Senior members of the profession have provided valuable input to the risk and claim management processes and there appears to have been good working relations between GIL and ADA Branch representatives through established consultative processes
- The current arrangements provide a high degree of transparency and allow participating ADA Branches to influence claims, risk management and pricing arrangements for the benefit of members and the profession which would not be possible under some other options
- Current underwriting approaches and targeted risk management provide the basis for maintaining an equitable approach to cost sharing between members.

Prior to 1 July 2000, the ADAVB had a relationship with MPS / DPL (an offshore MDO) to provide discretionary, incident based cover to the membership. From 1 July 2000, the Branch commenced a referral agreement with Guild Insurance Ltd to provide a contract of insurance to members. This change was made following a national tender process in which both insurers and mutuals were invited to participate. The tender process was supported by consulting actuaries, and established to the unanimous satisfaction of all participating State ADA Branches, that the interests of members were best served by a contract of insurance offered by an insurer that was prudentially supervised and regulated in Australia.



A similarly high proportion of the ADAVB membership holds their PI insurance through a contract with Guild as in NSW, i.e. over 90%, with the remainder comprising those who are not practicing and are therefore covered by either their previous mutual or a run off policy, and a small number of practitioners who hold a contract with an Australian registered insurer by arrangement with the offshore mutual.

### **Prudential supervision of insurers of health care providers**

*Question 1. What would be the implications of removing the requirement for prudential supervision of insurance provided to health care professionals other than medical practitioners, thus limiting the scope of the Act to medical practitioners?*

We also note with some surprise that the Discussion Paper asserts there is some problem with the “availability and affordability of insurance for some health care professionals, such as dentists and nurses”. While we cannot speak for the nurses, we can assure Treasury that dental professional indemnity insurance is readily available throughout Australia, and that premiums are very attractive compared with most other professions.

That being the case, the argument that different risk profiles between insurers of medical practitioners and insurers of other health practitioners somehow permits deregulation of professional indemnity for non-medical practitioners is not supported. Dental procedures rarely result in death, but they can certainly result in irreparable damage to people, and to very significant impact on their quality of life. Leaving patients without certainty of their ability to achieve redress was clearly a concern for the previous Liberal Government in Victoria when it introduced compulsory professional indemnity insurance for dentists via the Dental Practice Act 1999, and this view is now evidently shared by the current Labour Government, which has done the same thing for all registered health occupations via the Health Practitioners Registration Act 2005.

The ADAVB is very concerned that Treasury would contemplate exposing dental and other non-medical practitioners, and perhaps more significantly their patients, to the risk of unregulated insurers failing to cover dental treatment failure, negligence or misadventure.

This runs counter to the very substantial and well justified tightening of prudential regulations following the HIH Royal Commission, which were designed to ensure a more healthy, robust and competitive insurance market-place in Australia. In our view it would be entirely contrary to the public interest to remove the stringent requirements on insurers, which have raised the standards and financial stability of insurers in this country. It is also surprising that this paper appears around the same time that Federal Treasury has recently released another discussion paper relating to DMFs and direct offshore foreign insurers (DOFIs), which confirms the Government’s intention to require DMFs to meet APRA prudential requirements.

Our members currently enjoy certainty of cover, by virtue of the claims-made insurance contract with Guild. Given that premiums are inexpensive (being below those experienced by many other professionals), and that the policy offers automatic retroactive and run-off cover, they know that they have the protection they need.



As Guild rightly point out in their submission, “This is particularly pertinent given this relates specifically to liability insurance, where the beneficiaries are third parties to the insurance protection, and have no say in the financial strength or product scope of the provider”.

In conclusion, dental practitioners in Australia have a choice of a number of regulated insurers, and product offerings, and do not suffer from a lack of choices in the risk management market.

***Question 2. Would such an amendment significantly threaten the safety of indemnities provided to health care professionals other than medical practitioners?***

Yes, a potential return to the under-funding problems the Act sought to remedy is a very likely outcome of such an amendment. ADAVB does not support any relaxation of the prudential regulation of insurers of healthcare professionals nor do we believe that the product standards currently applying to medical practitioners should be extended to other health care professionals.

***Question 3. Is regulatory flexibility in prudential supervision necessary to allow the Government to respond to the market as it evolves, or would it introduce uncertainty for medical indemnity providers?***

ADAVB does not support the introduction of flexibility in the prudential supervision framework. We agree with the ADA NSW Branch that if this high level of prudential supervision was not available, it would make it difficult for us (and other member associations in healthcare) to provide objective advice to members regarding other alternatives arrangements.

We also concur with Guild’s view that there is a potential area of concern relating to unlicensed healthcare professionals (e.g. naturopaths, homeopaths, and therapeutic massage practitioners amongst others) and their clients who are currently not required to be protected by APRA regulated insurers, and this may justify some legislative response.

**Minimum contract cover amount**

***Question 4. Is there any strong rationale for maintaining the Government role in setting the minimum level of cover available?***

From a consumer protection perspective, the Government should maintain its current role in setting the minimum level of cover available. This helps to ensure that the potential under-insurance previously seen in the market-place cannot recur.



Our cover with Guild sees members offered a \$10 million limit of indemnity, with one automatic reinstatement. This level of cover is reviewed each year in consultations between the participating ADA Branches, and with the benefit of professional actuarial advice.

***Question 5. Given that medical practitioners are currently choosing to purchase \$20 million cover, is a legislatively-imposed minimum an unnecessary intervention in the market?***

We believe a legislatively-imposed minimum coverage level remains preferable, as indicated under Question 4 above.

### **Flexibility in the application of the product standards**

***Question 16. Is the flexibility to prescribe certain classes of health care professional or insurance contracts to which the retroactive or run-off cover obligations should apply offered by regulations necessary or desirable?***

The lack of affordable cover was limited to medical practitioners at a certain point in time, and this has now been addressed by the legislation. Other health professionals have access to affordable claims-made insurance protection with full retroactive and run-off protection, both now and in prospect.

ADAVB notes Guild's view that "the current flexibility to prescribe other classes of health care professional or insurance contracts could potentially be having an inhibiting impact on the effectiveness of open market competition in this area".

### **Training institutions**

***Question 17. What are the implications of removing regulation 4(1)(d) exempting training institutions, students and staff members who provide health care services to the public, through clinics and work at hospitals unrelated to training activity?***

We concur with the view expressed by Guild that, in the interests of consumer protection, the same prudential regulatory framework should apply to all health care professionals, regardless of the area of activity. Accordingly, regulation 4(1)(d) should be removed.

### **Volunteer health care professionals**

***Question 20. Should the exemption for volunteer organisations be maintained?***

ADAVB acknowledges the various arguments and scenarios presented in paragraphs 113 to 119 inclusive. It is difficult to apply the product standards due to the breadth of activities undertaken by the volunteer organisations engaging volunteer health care professionals.



However we believe that the prudential supervision requirements of the Act can, and should, be applied. This would enable the volunteer organisations to operate their full scope of activities in providing a public benefit, yet still maintain the important consumer protection requirements. As such, we would recommend a re-wording of the exemption to apply appropriate prudential supervision to volunteer organisations, while continuing to exempt them from the product standards.

***Question 21. Are the circumstances of volunteer organisations sufficiently different to warrant special treatment under the Act?***

Yes, please refer to our comment under Question 20 above.

**Additional changes to regulations**

***Question 22. Treasury would appreciate views of the possible additional changes to regulations discussed and any alternative approaches.***

ADAVB does not support any of the potential additional changes discussed in paragraphs 120 to 129.

**Additional changes to the Act**

***Question 23. Treasury invites commentary on whether there are any other issues with the Act not addressed by this paper. If there are additional issues, what would be the possible solutions?***

No other comments.

Thank you for the opportunity to provide input to this significant review. Should Treasury officers wish to discuss any aspect of this response, please do not hesitate to contact the author on (03) 9826 8318.

Yours sincerely,

Garry Pearson  
Chief Executive Officer  
ADAVB Inc.



## INFORMATION SUMMARY 2005/06

### PURPOSES

The objectives of the ADAVB are to promote the:

- improvement of the dental health of the public;
- art and science of dentistry; and
- highest standards of professional dental care

### MEMBERSHIP

- Approximately 2300 Dentists in private and public practice, and also 4<sup>th</sup> & 5<sup>th</sup> year students and ADC candidates
- 95% of registered private practitioners
- 9 suburban and 7 country groups

### MEMBER SERVICES & FUNCTIONS

- Continuing Professional Development Program
- Dental health education programs (eg. Dental Awareness Month)
- Community Relations – dispute resolution
- Code of Ethics (Conduct)
- Recent Graduate support
- Dental Assistant Training update seminars
- Member Service Plans (eg Professional Insurances; preferred suppliers)
- Industrial relations advice and representation
- Defence and legal support
- Advice on Practice Management
- Quality Assurance (including Doctors Health Advisory Service)
- Benevolent Fund
- Library and resource collection
- Political representation
- Representation to Government bodies
- Superannuation (Professional Provident Fund)
- Sports and social functions
- Publications – Newsletter, Journal, Award details, Manuals etc.
- Home Page (find us at <http://www.adavb.com.au>)

### INFORMATION & DISPUTE RESOLUTION SERVICES

The Branch provides information to the public on dental matters, and offers a conciliation service to assist patients to resolve disputes with member dentists. Information on treatments, facilities, dental issues and careers is available.



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