

In confidence

Office of the Minister of Health

Cabinet Social Policy Committee

## **Recommendations arising from the 2012 Review of the Health Practitioners Competence Assurance Act 2003**

### **Proposal**

1. Approval is sought to give effect to recommendations to amend the Health Practitioners Competence Assurance Act 2003, following a strategic review of the Act.

### **Executive Summary**

2. Responsible authorities and registered health practitioners need to act with integrity and in the interests of the public, and be seen to do so. The changes recommended in this paper recognise the trust and confidence patients place in health professionals. The changes are aimed at providing tangible evidence of responsible authorities' performance and increasing the public perception of that performance.
3. Following an operational review of the Health Practitioners Competence Assurance Act 2003 (the Act) that was required under the Act, a strategic review of the Act was undertaken to examine whether the underlying policy settings remained appropriate.
4. As a result of the strategic review, I have concluded that the Act should be amended to require:
  - i. regular performance reviews of responsible authorities
  - ii. responsible authorities to provide information about decisions on practitioner practice and develop appropriate naming policies
  - iii. responsible authorities to develop standards relating to integrated care, team work and inter-professional communications, to support integrated care
  - iv. recognition of the importance of transparency, integrated patient-centred care, workforce flexibility and workforce planning
  - v. responsible authorities to collect and provide additional workforce information and data to contribute to health workforce planning, subject to privacy requirements.
5. A bill has already been drafted (the Health Practitioners Competence Assurance Amendment Bill (the Bill)) to give effect to recommendations arising from the operational review. The Bill was held over while the strategic review took place. I propose amending the Bill to give effect to the recommendations outlined in paragraph 4 above.
6. A public discussion document for the strategic review of the Act was released in 2012 and drew 146 submissions. This was followed by a series of focus group discussions with key stakeholders.

## Background

7. Section 171 of the Health Practitioners Competence Assurance Act 2003 (the Act) required the Director-General of Health to review the operation of the Act three years after it commenced, consider whether any amendments to the Act were necessary or desirable and report the findings to the Minister of Health.
8. A report in June 2009 on the review of the Act concluded that, on the whole, the Act was operating well to achieve its original underlying policy. The report made a number of recommendations aimed at improving the operation of the Act [SOC (09) 35 refers]. The Health Practitioners Competence Assurance Amendment Bill (the Bill) was drafted to effect the recommendations for legislative change arising from the 2007 – 2009 review. These are summarised in Appendix 1.
9. One of the operational recommendations of the 2007 – 2009 review was that the Director-General of Health be instructed to carry out a further review of the Act, to examine whether the underlying policy settings of the Act remained appropriate. The strategic review began in 2012 and the Bill was held over to avoid its introduction negatively impacting on the review.
10. The scope of the strategic review was agreed by Cabinet in July 2012 [CAB Min (12) 25/6]. The review was to assess how:
  - the Act supports the delivery of the workforce required, both now and in the future
  - the pastoral care for the health and welfare of health professionals, to support the sustainability of the workforce, can be improved
  - a robust data collection system to inform sector intelligence and planning can be developed
  - the Act can work effectively within the wider health environment, and whether the purpose of the Act remains fit for purpose
  - the health occupational regulatory settings can be improved
  - the Act can provide optimal levels and types of regulation for the next five to ten years
  - the operational functioning of the Act can be improved.
11. A two-stage consultation process followed: a public discussion document, followed by focus groups to discuss findings and recommendations from the public consultation.
12. The public discussion document (“2012 Review of the HPCA Act 2003 - A Discussion Document”) drew 146 submissions. The focus groups included representatives from responsible authorities, professional associations, professional colleges, consumer groups, unions, and government organisations. Discussions were also held with responsible authorities in 2015 concerning proposals to improve workforce data.

## Comment

13. Following consideration of submissions and the discussions held during the review, I propose that:
  - a) responsible authorities be subject to a performance review every five years

- b)** responsible authorities be required to provide complainants, key stakeholders, and the public with information that conveys the basis upon which responsible authorities have made decisions about practitioner practice and to develop and publish policies about the naming of practitioners who have been referred or have been the subject of complaints, to show how they balance the privacy needs of practitioners and complainants/referrers and the need for transparency
  - c)** responsible authorities be given an additional function to develop standards for skills and practices that contribute to integrated health care, including standards for team work and interprofessional communications
  - d)** the purpose statement of the Act be amended to provide that, within the overall purpose of the Act – to protect public health and safety – regard must also be had for the importance of the principles of transparency, supporting integrated patient-centred care, workforce flexibility and supporting workforce planning
  - e)** responsible authorities be given an additional function to collect additional data about health practitioners (including name, date of birth, employer(s), place(s) of employment and hours of work) and to share this with the Ministry of Health to inform workforce development and planning.
- 14.** I consider that these proposals address the scope of the review. The recommended changes recognise the trust and confidence patients place in health professionals, and the need for responsible authorities and their registered health practitioners to not only act with integrity and in the interests of the public, but to be perceived to be doing so. The key objectives of the recommended changes are to provide tangible evidence of responsible authorities' performance of their functions and to increase the public perception of responsible authorities' performance.
- 15.** There was general agreement that responsible authority decisions could be seen to be compromised should responsible authorities be required to provide pastoral care and this idea has not been included in the set of proposals.

Proposal i: Performance reviews of responsible authorities by reviewers nominated by Ministry of Health

- 16.** For the Act to be fully effective, members of the public and professionals themselves need to have confidence that responsible authorities will deal appropriately with their concerns and are carrying out their functions in the interests of public safety.
- 17.** Responsible authorities provide annual reports which are tabled in Parliament. Section 124 of the Act provides for the Minister to appoint an auditor to audit the records of a responsible authority in order to ascertain whether an authority has complied with, or is complying with, the provisions of the Act. Performance reviews would provide the evidence needed to trigger an audit of an individual responsible authority under Section 124 of the Act, if required.
- 18.** As well as providing stakeholder assurance, performance reviews would provide opportunities for responsible authorities to learn from best practice and improve functioning. Terms of reference could change over time in response to government expectations, public demand or international practice. The Ministry of Health would select reviewers in consultation with responsible authorities. The results of reviews would be published on responsible authorities' websites. The Minister of Health would respond to reviews and may require a responsible authority to address any concerns.

**19.** Performance reviews would impose an additional cost on responsible authorities which may be reflected in raised fees for professionals. Costs to responsible authorities would be lowered if they adopted standardised processes, shared services and jointly purchased review services. There is evidence to suggest that responsible authorities are increasingly cooperating in the provision of essential administrative services and, in some instances, are co-located.

Proposal (ii): Require responsible authorities to provide information about decisions on practitioner practice and to develop naming policies

- 20.** On the whole, the New Zealand public cannot make judgements, based on the information available, about the appropriateness of responsible authority decisions on practitioner practice, or even find out whether a responsible authority has taken or considered action in relation to a particular practitioner.
- 21.** The Act does not address what background information or evidence should be provided to the public to explain the decisions of responsible authorities. There is inconsistency of practice across responsible authorities with some providing the minimum information required by the law while others are a little more open.
- 22.** Many submissions from employers, health professionals and complainants expressed concern about the risks associated with the lack of information provided.
- 23.** The recommendations of the United Kingdom Professional Standards Authority for health sector regulators and the practices of bodies such as the United Kingdom General Medical Council, the Australian Health Practitioner Regulation Agency (AHPRA), the Health and Disability Commissioner in New Zealand and the Health Practitioners Disciplinary Tribunal all indicate that the transparency levels of New Zealand's responsible authorities have fallen behind best practice.
- 24.** Transparency of decision-making can be achieved by requiring all responsible authorities to provide information to complainants, referrers and other stakeholders (such as employers, the Accident Compensation Commission and the Ministry of Health) that conveys the evidence and reasoning that supports their decisions.
- 25.** Responsible authorities and many practitioners expressed concerns about the preservation of natural justice and the privacy of both practitioners and complainants, and that fear of public exposure may deter practitioners from voluntarily seeking assistance when they recognise that their practice may carry risks for consumers. This can be addressed by each responsible authority developing and publishing a naming policy.
- 26.** The Health and Disability Commissioner publishes case notes on their website, anonymised to protect the privacy of all parties involved in the complaints resolution process.
- 27.** An appropriate naming policy would minimise the impacts on individual practitioners, both in terms of their self-referring behaviour and in terms of preserving privacy.
- 28.** This proposal has some impact on responsible authority processes and costs but the cost increases would not be high once processes are developed and are outweighed by the potential benefits to improving public confidence.

Proposal (iii): Require responsible authorities to develop standards for team work and interprofessional communications to support integrated care

- 29.** The Health and Disability Commissioner has identified that many complaints about mistakes and inadequate care arise from failures in team work. The Act requires responsible authorities to set standards of clinical competence, cultural competence and ethical conduct, but not standards for the skills that support integrated care.
- 30.** Throughout the review, there was a very high level of agreement among stakeholders that “team work” is critically important to patient-centred care and safety. However, there is considerable variability among the codes of ethics, conduct and practice, and the standards which responsible authorities provide to their various practitioners. Not all make the clear connection between team work/interprofessional communication and public safety. Others are brief and lack a strategic focus.
- 31.** The groups consulted tended to believe that there is no need for standards that are common across all professions and that legislating for standards was unnecessary. Some participants, however, considered that the Act could provide an important mechanism for signalling the importance of team work to public safety.
- 32.** On balance, I am persuaded that the development of standards for team work and communications to support integrated care will focus attention on the need for the development and maintenance of such skills and improve patient safety. Although there will be some costs involved in establishing the standards, they can be minimised by building on what already exists and by effective communication among responsible authorities.

Proposal (iv): Balancing the safety focus of the Act with considerations of transparency, integrated care, workforce flexibility and workforce planning

- 33.** New Zealand’s health workforce needs to be flexible and to work in an integrated way in order to address the changing health needs of the population.
- 34.** Rather than focusing exclusively on public safety in the development of their policies and regulations, responsible authorities should consider the benefits of transparency, the need for workforce flexibility and the drive for integrated patient-centred care in the health system and should make the necessary trade-offs where appropriate.
- 35.** I propose that section 3(1) of the Act be amended to provide that, within the overall purpose of the Act – to protect public health and safety – regard must also be had for the importance of the principles of transparency, supporting integrated patient-centred care, supporting workforce flexibility and supporting workforce planning. The primary goal of the Act will continue to be protecting public safety.
- 36.** There are no or very marginal costs associated with responsible authorities systematically considering such impacts.

Proposal (v): Improving workforce data to enable better workforce development and planning

- 37.** New Zealand is a small country that competes for health practitioners within an international labour market. In order to plan effectively to meet the demand for health professionals, we need to monitor the flows into and out of New Zealand, the age profile of the different workforces, the areas where the country faces ongoing workforce shortages, and the mix of generalists and specialists the country needs.

38. At the national level the Ministry has access to some data about health practitioners, but it is not always robust and is not comprehensive across responsible authorities. Responsible authorities' processes of registering health practitioners and issuing annual practising certificates provide an opportunity to generate robust data about the regulated health workforce.
39. During the review, there was general support for enhancing workforce data collection, with some concerns about potential additional costs, the privacy of health practitioners and health practitioners feeling obliged to provide data for registration which would then be used for other purposes.
40. A number of responsible authorities already collect detailed workforce data from health practitioners when their annual practising certificates are renewed and provide this to the Ministry of Health for workforce planning purposes. Any published data are anonymised in accordance with privacy requirements.
41. I propose amending the Act to require responsible authorities to collect and provide workforce data to the Ministry of Health to enable workforce planning and development. This would be consistent with the principles of the Privacy Act 1993 either where it is consistent with the purpose for which it was collected (or a related purpose) or shared under a permitted exception, such as being provided for statistical purposes.
42. The Ministry of Health will consult with the Office of the Privacy Commissioner in implementing this proposal.
43. Costs of enhanced data collection are not expected to be onerous and can be reduced by collaboration between responsible authorities. The terms of reference for performance reviews could address responsible authorities' obligations to improve, where necessary, the completeness and reliability of workforce data.

### **Consultation**

44. The Accident Compensation Corporation, Health and Disability Commissioner, Ministry of Business Innovation and Employment, Ministry of Justice, State Services Commission and the Treasury were consulted in drafting the Cabinet paper. Their views are reflected in the paper.
45. The Ministry for Social Development and Department of the Prime Minister and Cabinet have been informed.

### **Financial Implications**

46. There are no financial implications arising from these proposals.

### **Human Rights**

47. The proposals contained in this paper have no implications in terms of the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Legislative Implications**

48. It is proposed that the recommendations for changes to the Health Practitioners Competence Assurance Act outlined in this paper be incorporated into the already drafted Health Practitioners Competence Assurance (Amendment) Bill which is currently held over in the legislative programme.
49. The Bill has a priority 6 on the 2015 Legislation Programme (drafting instructions to the Parliamentary Counsel Office in 2015).

## Regulatory Impact Analysis

### *Regulatory impact analysis requirements*

**50.** The regulatory impact analysis requirements apply to this proposal. A regulatory impact statement has been prepared and is attached to this paper.

### *Quality of impact analysis*

**51.** The Ministry of Health's Papers and Regulatory Committee has reviewed the RIS and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria. It provides a good analysis of the issues identified in the referenced review of the Act, but forgoes the opportunity to consider the purpose of the Act more widely.

## Gender Implications

**52.** There are no gender implications arising from the proposals in this paper.

## Disability Perspective

**53.** There are no disability implications arising from the proposals in this paper.

## Publicity

**54.** The introduction of the Health Practitioners Competence Assurance (Amendment) Bill is likely to attract interest from responsible authorities, professional associations, the Health and Disability Commissioner and other stakeholders. A communications strategy will be developed for use at that time.

## Recommendations

**55.** The Minister of Health recommends that the Committee:

1. **note** that a consultation process was undertaken on the strategic review of the Health Practitioners Competence Assurance Act 2003.
2. **agree** that the Health Practitioners Competence Assurance Act 2003 should be amended to:
  - a) require responsible authorities to be subject to a performance review every five years by a reviewer nominated by the Ministry of Health in consultation with responsible authorities.
  - b) require responsible authorities to provide complainants, key stakeholders, and the public with information that conveys the basis for decisions about practitioner practice; and to develop and publish policies about the naming of practitioners who have been referred or have been the subject of complaints, to show how they balance the privacy needs of practitioners and complainants/referrers with the need for transparency.
  - c) include an additional function in section 118 to develop standards for skills and practices that contribute to integrated health care, including standards for team work and interprofessional communications.
  - d) provide that, within the overall purpose of the Act – to protect public health and safety – regard must also be had for the importance of the principles of transparency, supporting integrated patient-centred care, supporting

workforce flexibility and supporting workforce planning.

- e) include an additional function in section 118 to require responsible authorities to collect additional data about health practitioners (including name, date of birth, employer, place of employment and hours of work) and share this with the Ministry of Health to inform workforce development and planning.
3. **agree** to incorporate the above proposals into the previously drafted Health Practitioners Competence Assurance (Amendment) Bill which is currently held over in the legislative programme [SOC (09) 35 refers]
4. **note** that a Health Practitioners Competence Assurance (Amendment) Bill is included on the 2015 Legislation programme with a category 6 priority (drafting instructions to Parliamentary Counsel Office in 2015).
5. **agree** that the Minister of Health arrange for drafting instructions to be provided to Parliamentary Counsel Office to give effect to the proposals described in this paper.

Hon Dr Jonathan Coleman  
Minister of Health

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

## **Appendix 1: Summary of draft Health Practitioners Competence Assurance Amendment Bill**

The draft Health Practitioners Competence Assurance Amendment Bill amends provisions in the Act to:

- clarify that responsible authorities can receive and act on information from members of the public about the practice, conduct, or competence of health practitioners;
- improve the efficiency of processes, including allowing responsible authorities to delegate to a committee their power to appoint a professional conduct committee and giving responsible authorities discretion as to whether to refer notice of minor offences to a professional conduct committee
- improve the efficiency of processes for operating the Health Practitioners Disciplinary Tribunal, including allowing the chair of the Tribunal to issue at any time before a charge is heard an order for the non-publication of names where all parties consent, enabling the Tribunal to set a minimum period within which a health practitioner whose registration has been cancelled cannot apply for reregistration, and enabling the Tribunal to notify any employer of orders made by the Tribunal
- enable a responsible authority to order the suspension of the practitioner's practising certificate or registration if a practitioner is involved in a criminal proceeding or an investigation, only if the authority believes the practitioner's alleged conduct poses a risk of serious harm to the public
- reduce the administrative burden of reporting requirements for quality assurance activities
- clarify that provisions relating to unpaid fines, costs, or expenses include those imposed under former legislation and to allow a responsible authority to require a health practitioner to be examined by an appropriate health practitioner (other than a medical practitioner, which is already allowed) where the authority considers the health practitioner is unable to perform the functions required for his or her profession because of some mental or physical condition
- give the Governor-General, on the recommendation of the Minister of Health, the power by Order in Council to amalgamate existing responsible authorities when it is considered to be in the public interest.