

Briefing

Approach for the review of the Health Practitioners Competence Assurance Act 2003

Date due to MO:	19 December 2023	Action required by:	N/A
Security level:	IN CONFIDENCE	Health Report number:	H2023032966
To:	Hon Dr Shane Reti, Minister of Health		
Consulted:	Health New Zealand: <input checked="" type="checkbox"/> Māori Health Authority: <input checked="" type="checkbox"/>		

Contact for telephone discussion

Name	Position	Telephone
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Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Approach for the review of the Health Practitioners Competence Assurance Act 2003

Security level: IN CONFIDENCE **Date:** 19 December 2023

To: Hon Dr Shane Reti, Minister of Health

Purpose of report

1. The purpose of this report is to confirm your objectives for the ongoing review of the Health Practitioners Competence Assurance Act 2003 and seek your agreement to the proposed approach for the next phase of the review.

Summary

2. The HPCA Act provides a framework for the regulation of health practitioners to ensure they are fit and competent to practise their professions. This regulatory framework has a significant impact on the availability, accessibility, responsiveness, productivity, and quality of the health workforce.
3. While the HPCA Act has contributed to the production of high quality and competent health practitioners, the current framework reinforces entrenched professional silos that do not encourage collaboration and innovation within our workforce.
4. The perverse incentives of the current regulatory framework lead to increasing levels of regulation that are disconnected from the needs of the system. This is evident in long-standing barriers to entry to a profession, such as slow processing times for accreditation (including for overseas applicants).
5. The HPCA Act also does not effectively manage different levels of risk to patient safety, which can lead to gaps in regulation in certain areas and unnecessarily burdensome regulation for some health workers. To deliver the health services efficiently and safely to meet the needs of New Zealanders, workforce regulation needs to be proportionate to the level of risk to the public (i.e. "right touch").
6. Manatū Hauora has been reviewing the HPCA Act to assess whether it could be improved to allow us to better build and utilise our workforce.
7. Through the work to date we have found that the HPCA Act will need to be replaced or significantly amended to address the regulatory barriers that are impeding the development of the workforce we need, establish a more sustainable regulatory structure and to better deliver on patient safety.
8. This briefing outlines our proposed direction and an indicative process for developing new legislation, beginning with a public consultation document to be released in 2024.

Recommendations

We recommend you:

- a) **Note** that legislative change is needed to address systemic health workforce sustainability problems, workforce shortages and inefficient regulation **Noted**
- b) **Note** that previous attempts to amend the HPCA Act have been too narrow in scope to achieve significant improvement in health workforce regulation **Noted**
- c) **Agree** to Manatū Hauora developing and consulting on fundamental changes to health workforce regulation **Yes/No**
- d) **Note** that public consultation is needed to outline the justification for changes to health workforce regulation, seek input and encourage buy-in to the process **Noted**
- e) **Agree** to the proposed indicative timeframe for introducing a bill in 2025 **Yes/No**
- f) **Agree** to Manatū Hauora drafting a public consultation document on a new direction for health workforce regulation **Yes/No**
- g) **Note** that as the new legislation is developed, we will continue to work within the current regulatory environment to manage workforce challenges **Noted**
- h) **Note** that we will update you on progress through the weekly update. **Noted**

Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora
Date:

Hon Dr Shane Reti
Minister of Health
Date:

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Context

9. New Zealand is facing serious workforce sustainability challenges, including workforce shortages, rising costs, and a workforce that is not representative of the country's diverse population.
10. The causes of these challenges are multifaceted and complex. Recent advice [H2023032584 refers] provides an overview of the various settings that need to be adjusted to address these challenges, which includes changes to workforce regulation.
11. Much of our health workforce is regulated under the Health Practitioners Competence Assurance Act 2003 (the HPCA Act). Under the HPCA Act, Responsible Authorities (RAs) oversee registration of practitioners, set scopes of practice, accredit education and training providers, and define professional standards.

Regulatory reform has been needed for some time

12. Our current regulatory settings are not responsive to changes in the health system and government policy. They do not enable the development of a flexible, sustainable and diverse health workforce that meets the needs of all people in New Zealand, particularly Māori and Pacific people.
13. We do not have accessible health workforce skills and capabilities, and our workforce settings are not agile enough to respond to growing health needs. Our experience responding to acute workforce pressures during the COVID-19 pandemic illustrated the need to empower health workers to grow their skills to match increased scopes of practice, particularly needed for innovative models of care (e.g. Vaccinating Health Workers).
14. RAs have limited regard to wider health system needs. While RAs undertake their standard-setting and accreditation roles, this is often done in isolation of other RAs resulting in inconsistencies between professions. Education institutions' decisions that affect the health workforce are also made in isolation of RAs and other players in the health sector, resulting in a disconnect in national health workforce planning.
15. Improving health system alignment will allow and enable influence over the number of individuals training in different professions, shifting scopes of practice (where safe and appropriate), offering expanded roles to practitioners, and lifting the capability to respond to new models of care and technologies, will alleviate pressure over time and make better use of the health workforce.

Health reforms have identified the need for more significant change

16. The final report of the Health and Disability System Review in 2020 highlighted the need for a new approach, stating the "the types of regulation, professional silos, provider-

based system, treatment, and highly medical model that has evolved will not meet future needs.”

17. This view was reiterated by the Health Workforce Advisory Board, which acknowledged “the RAs have complete autonomy in accreditation standards, but without the consequent responsibility for policy settings relating to accreditation standards, which are required for a responsive and rapidly changing health sector.”

Changes to regulatory settings will need to be ambitious

18. The HPCA Act was amended in 2019 following two previous reviews, completed in 2009 and 2012. These amendments focused on addressing operational issues and attempted to improve collaboration among RAs within the current regulatory structure. However, these changes were too narrow in scope to achieve the significant shift in workforce regulation needed to address long standing issues.
19. To achieve this shift will require health workforce legislation with a new purpose and a more cohesive regulatory structure.
20. Manatū Hauora is proposing a substantial workforce agenda (H2023032584 refers) to address persistent workforce challenges. A new approach to health workforce regulation is a key enabler for the other system shifts that are needed across education and employment settings.
21. Any significant changes to health workforce regulation will likely be contentious given entrenched views toward the status quo of independent professional regulation.

Review of the HPCA Act

22. As part of the health workforce work programme in 2023, Manatū Hauora has been reviewing the HPCA Act.
23. Through 2023, Manatū Hauora has engaged with stakeholders, including Māori practitioners, professional organisations, and RA staff and board members, to seek their views on the HPCA Act and its implementation.

Rationale for legislative change

24. The review has so far identified several key challenges that would require legislative change to align workforce regulation with system needs, including:
 - a. **Narrow interpretation of “safety”:** The primary purpose of the HPCA Act is to protect the health and safety of the public by ensuring that health practitioners are competent and fit to practise their professions. However, there is a growing view that shortages of health workers may pose as great a risk to public safety as the standards applied to the workforce. The current regulatory settings do not consider the risk to patient safety posed by health services being unavailable or inaccessible. This leads to decisions which prioritise individual safety over systemic safety – such as increasing the length of training programmes or establishing heightened barriers to overseas-trained professionals practising in New Zealand. A future regulatory framework needs to be agile enough to respond to changing workforce needs while continuing to uphold appropriate standards for practitioners.

- b. **Limited coverage of the Act:** Stakeholders noted that the HPCA Act only regulates registered practitioners, which can create regulatory gaps and under-regulation of some workforce groups. There are concerns that this increases the risk of services being provided by unsuitable practitioners. As a result, the HPCA Act is not seen as effective in dealing with people carrying out tasks that should be completed by a registered practitioner.
- c. **Restrictive scopes may not reflect workers' skills and capabilities:** Practitioners can be restricted from providing services in which they are otherwise competent merely because a task is not within their profession's scope of practice. A review of this approach could allow for greater flexibility across the workforce and improve access, particularly for rural communities, by permitting more practitioners with the required skills and capabilities to provide more general, low-risk services.
- d. **Limited collaboration and consistency across RAs:** The independence of RAs – from government and each other – means there are limited incentives to collaborate or coordinate with each other or mechanisms for government to provide direction and encourage consistency and efficiency across practices. This can result in the decisions of one RA having unintended impacts on another and create barriers to inter-disciplinary and teams-based working. While small-scale actions could attempt to address this matter without legislative change, change to the legislation may be required to embed accountability, collaboration, and coordination across the system.
- e. **Professional silos:** RAs are subject to a range of perverse incentives when it comes to effective public regulation. Because they're split by profession and are predominantly governed by members of that profession, there are social and professional incentives to raise regulatory barriers over time; to adopt profession-friendly regulations (e.g. around cultural safety); and to limit transferability of learning to other professions (i.e. "patch protection").
- f. **Disproportionate regulation:** The current system offers only a binary approach to regulation. This approach does not reflect the diversity of services regulated under the HPCA Act. For example, dispensing opticians are currently regulated in the same way as surgeons, despite vastly different risk profiles. "Right-touch" regulation – such as a tiered approach based on risk – would help maintain quality, while improving availability and accessibility.
- g. **Regulatory efficiency:** RAs are largely reliant on registration fees (from their professions) to fund their activities, which has led to financial sustainability issues for some smaller regulators. For some regulators, a significant proportion of funds needs to be held in reserve for potential disciplinary actions that may be required. This inhibits innovation and improvement in areas such as processing times of registration applications.

Direction of the review

- 25. The review of the HPCA Act is considering how to provide a responsive and sustainable regulatory system to assure safety with choices around:
 - a. the role of regulators in the health system, e.g. taking a whole-of-system or a profession-only view of regulation

- b. the effectiveness of regulatory systems centred on professions (current state) versus services
 - c. the interaction between the regulated and unregulated health workforces
 - d. sustainable funding models for regulation.
26. There is a longer-term opportunity to establish an approach to enable flexibility and uphold safety that allows the workforce to utilise skills and capabilities needed for outcomes, e.g. enabling the workforce to complete the required range of activities to meet patient need:
- a. enacting “right-touch”, risk-based regulation of health services to enable more efficient provision of services
 - b. flexible education and training pathways into the health workforce and opportunities of ongoing upskilling
 - c. an integrated approach to the regulated and unregulated workforces.

Incorporating your priorities into the review

27. The consultation document will seek views on a new direction for health workforce regulation. However, it will also be an opportunity to consult on specific improvements to address current workforce challenges.
28. This could support your priorities to enable:
- a. easier pathways for doctors trained in comparable overseas jurisdictions to practise in New Zealand; and
 - b. other appropriately skilled and qualified health professionals to take on primary care tasks to reduce pressure on general practitioners.
29. Other priority areas that you wish to see addressed through this review can be included in the consultation document.
30. This review will also align with Australia’s recent independent review of regulatory settings. The Australian review resulted in 28 recommendations to provide a more efficient and effective regulatory journey to encourage more internationally qualified health practitioners to seek work in Australia.


Indicative process and timeframes for review

31. Manatū Hauora intends to deliver a bill to replace or significantly amend the HPCA Act as soon as is practicable.
32. The first step in this process is to confirm the direction for the new legislation through public consultation. We intend to begin this process with a public consultation document to be released in early 2024. This document will outline the context of the new health system, the case for change, our aspirations for the health workforce and the proposed policy changes to inform new legislation.
33. The changes to workforce regulation being explored in this review are significant, and if implemented will require fundamental shifts for all stakeholders (including education agencies and providers, RAs, professional bodies, unions and employers). It is likely that

there will be resistance to some of the proposed shifts, particularly regarding independence and role of the RAs.

34. Officials will provide a consultation plan to manage discussions with the various stakeholders.

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Improvements can be made without legislative change

36. Amending or replacing the HPCA Act is a long-term project, likely to take at least 2-3 years to draft and implement a new act. It will be difficult to make significant progress in addressing the challenges described above without legislative change. However, there are actions that can improve how the workforce is regulated under the existing legislation.
37. These include:
 - a. **Timeliness of RA board appointments:** Our engagement revealed concerns about the time it takes to appoint RA board members. Further, it can be challenging to find Māori candidates, suitable practitioner candidates in smaller professions, and experienced board members willing to serve on boards of smaller RAs. Manatū Hauora has been working to improve the timeliness of RA board appointments, to

increase the number of Māori on boards and to ensure that boards do not have more than one or two vacancies at a time.

- b. **Regulatory governance training for board members and candidates:** Our engagement also revealed concerns about the skills and experience of RA board members. The role of an effective board member requires a skillset distinct from the core capabilities that make a successful health practitioner. Furthermore, there is a high demand for Māori and Pacific board candidates with governance experience, and for experienced board candidates with understanding of te ao Māori and the principles of health equity. Ensuring that regulatory governance training is available to potential candidates and existing board members would raise the quality of board membership and operations. Some RAs are opposed to receiving Crown funding but would welcome Crown provision or facilitation of training for board members and assistance with improving cultural capability.
- c. **RA performance reviews:** In 2019, section 122A was added to the HPCA Act, requiring performance reviews of the RAs. Some RAs did not consider that the first round of reviews, completed in late 2021, delivered significant value or assisted them in their work. Nor did it provide us with the information we need to monitor and understand RA performance. As we advised the Minister of Health under the previous Government [HR20221454 refers], we also had concerns about the quality of the reviews. We are exploring ways that the reviews can better support performance improvement, and generally assist the RAs and Manatū Hauora, such as through changes to the performance standards against which RAs are assessed.
- d. **Expedite disciplinary processes:** The disciplinary process for practitioners is widely seen as inflexible and overly lengthy, which has adverse effects for practitioners and complainants. We will consider what actions could be taken within the current provisions of the HPCA Act to expedite the disciplinary process.
- e. **Cultural safety:** Improving the standards of cultural safety promotes equitable, respectful, and effective care for patients and supports the well-being of healthcare practitioners. We are exploring how the health agencies can use their new roles within the reformed health system to support RAs and the governing bodies of self-regulating professions in New Zealand to bolster cultural safety for patients and healthcare practitioners by working collaboratively.
- f. **Manatū Hauora to play a more active stewardship role:** While the independence of RAs limits Manatū Hauora's directive capability, Manatū Hauora can play a stronger guidance, advisory and mediation role to support coordination across RAs. Activities may include coordinating common prescribing practice, clarifying RAs' role in achieving health system goals and maintaining a level of consistency in scopes across RAs. This could alleviate some of the burden on RAs' time and resource, enabling them to focus on improvements in areas such as timely registration of overseas workers.

Next steps

38. Manatū Hauora will provide further advice on the review of the HPCA Act, along with a draft public consultation document, in early 2024.
39. We will also provide a consultation plan for your approval.

40. Following your feedback, we will seek to finalise the consultation document for Cabinet and release publicly in May/June 2024.
41. Officials will provide further updates on how we progress improvements that can be made without legislative change.

ENDS.

Minister's Notes