

Briefing for decision

Expedited path for future of health workforce regulatory settings

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Security level: IN CONFIDENCE **Reference:** H2024051486

To: Hon Dr Shane Reti, Minister of Health

Consulted: Health New Zealand:

Proactive release: This **title** is proposed by the Ministry of Health for proactive release:

Contact for telephone discussion

Name	Position	Telephone
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Minister's office to complete:

Approved Decline Overtaken by events

Needs change Seen

See Minister's Notes Withdrawn

Comment:

Briefing for decision

Expedited path for future of health workforce regulatory settings

Security level: IN CONFIDENCE

Date: 3 October 2024

To: Hon Dr Shane Reti, Minister of Health

Purpose of report

1. This paper outlines options for introducing a bill to establish a new approach to regulating the health workforce, including expedited options to introduce a bill by s 9(2)(f)(iv)

Summary

2. It is possible to draft and introduce a bill to amend the Health Practitioners Competence Assurance Act 2003 (HPCA Act) s 9(2)(f)(iv). This timeframe for introduction would still be subject to Cabinet approval and Parliamentary Counsel Office agreement to draft s 9(2)(f)(iv).
3. This timeframe will require trade-offs on the scope and scale of the changes that could affect the quality of legislation. These trade-offs may jeopardise the ability to make the necessary changes to the regulatory system to achieve tangible improvements for the workforce and consumers.
4. As such, the Ministry's preferred approach remains to introduce legislation s 9(2)(f)(iv), which will deliver more significant reform. This would provide sufficient time for Cabinet to make the series of detailed policy decisions required to introduce a fully developed bill.
5. It will also allow public consultation s 9(2)(f)(iv) to make a statement on the Government's direction and intent regarding health workforce regulation, as part of a process seeking further input from professions, stakeholders, and the broader public.

Recommendations

We recommend you:

- a) **Note** that you have indicated an interest in expediting the process to introduce a bill regarding health workforce regulation. **Noted**
- b) **Note** that expediting the bill requires trade-offs to the scope and scale of improvements to the regulatory system. **Noted**
- c) **Note** that the timeframe for introduction of the bill s 9(2)(f)(iv) will depend on Cabinet decisions being taken s 9(2)(f)(iv), drafting agreement from the Parliamentary Counsel Office, and the bill's priority on the Government's legislative programme s 9(2)(f)(iv). **Noted**

d) **Note** that if progressing an expedited process, we will need your agreement to targeted consultation in parallel with policy development over October, with Ministerial consultation on the Cabinet paper with policy proposals in November. **Noted**

e) **Agree** the timeframe for policy proposals to Cabinet for a new approach to regulating the health workforce:

- i) Option 1 (minor HPCA Act amendment) – s 9(2)(f)(iv) **Yes/No**
[Redacted]
- ii) Option 2 (medium HPCA Act amendment, develop policy through legislative process) – s 9(2)(f)(iv) **Yes/No**
[Redacted]
- iii) Option 3 (new legislation) – s 9(2)(f)(iv) **Yes/No**
[Redacted] **(preferred option)**



Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora
Date: 3 October 2024

Hon Dr Shane Reti
Minister of Health
Date:

PROACTIVELY RELEASED

Expedited path for future of health workforce regulatory settings

Background

There are issues with the HPCA that need to be addressed

1. The HPCA Act is a broad and enabling piece of legislation. While there are benefits to this, it has led to a system where there are 18 different regulators (responsible authorities, RAs) that adopt different approaches to regulating the health workforce, with limited regard to the impact on wider health system needs. The functions of RAs (e.g. standard-setting and accreditation) are often performed in isolation of other RAs, leading to inconsistencies between professions.
2. The HPCA Act establishes the actors, structures and functions of the health workforce regulatory system, and devolves regulatory decision-making to said actors. While the HPCA Act provides the Minister of Health some powers to ensure RAs comply with legislation, these powers are disproportionate and reactive, so therefore mostly ineffective in providing system direction and accountability.
3. The independence of RAs—from government and each other—means there are few incentives to collaborate or coordinate with each other, or mechanisms for government to provide direction and encourage consistency and efficiency across regulators.
4. The Ministry of Health (the Ministry) has limited levers to influence and support RAs under the current Act. This challenges the Ministry's ability to effectively perform its role as steward of the health system.
5. Furthermore, there are serious concerns about the financial sustainability of some smaller RAs under the current framework. For some regulators, a significant proportion of funds needs to be held in reserve for potential disciplinary actions. This inhibits innovation and improvement in areas such as processing times of registration applications.

Addressing these issues requires a fundamental change in the way we legislate our health workforce regulatory system

6. The regulatory structure established under the HPCA Act will need to be significantly changed to:
 - a. better enable workforce development,
 - b. establish a more sustainable regulatory structure, and
 - c. better deliver on patient safety.
7. This level of change will require new legislation that can establish a different (or significantly changed) regulatory structure.
8. Previous attempts to make minor adjustments to the HPCA Act have provided limited benefit. The amendments in 2019 focused on addressing operational issues and

improving RA collaboration, however these changes were unable to be fully implemented in the current regulatory structure.

9. We are currently undertaking a process to develop options for significant change to health workforce regulatory settings.
10. Through this process we expect to provide you with policy proposals ^{s 9(2)(f)(iv)} to consider and seek agreement from Cabinet to consult in ^{s 9(2)(f)(iv)}

Options to introduce legislation ^{s 9(2)(f)(iv)}

11. This briefing outlines options and considerations for introducing a bill to establish a new approach to regulating the health workforce, including expedited options to introduce a bill ^{s 9(2)(f)(iv)}

Option 1: minor HPCA Act amendment bill ^{s 9(2)(f)(iv)}

12. The first option is to introduce a complete amendment bill to the HPCA Act ^{s 9(2)(f)(iv)}. To achieve this, we would need to reduce the scope and scale of change to the regulatory system. This would take the form of minor amendments to the HPCA Act that do not change the nature of the legislation, i.e. strengthening expectations of RAs. An indicative timeline is available at Table 1.
13. This could be done alongside implementing actions currently available under the Act, such as amalgamating some RAs.
14. We have identified possible amendments to the legislation that would improve regulator accountability and decision-making, such as broadening consultation processes and improving enforcement provisions [H2024048465 refers].
15. This could go some way to increasing accountability and transparency, and reducing regulatory silos. But it would not in and of itself create the necessary change for increased productivity, cohesion, and responsiveness. Further, some RAs already have difficulty meeting the existing expectations in the Act. So, there are practical questions regarding the extent to which they would be able to meet additional requirements if other changes weren't made to address resourcing and funding issues, such as amalgamating.
16. Amalgamation may go some way to addressing practical implications around the funds and resources required by regulators to meet any strengthened expectation. But it may be complex and time-consuming, and would not change the relationship of the regulators to government or address systemic issues, such as accountability.
17. Other changes that may seem minor, such as increased ministerial authority, would be considered a significant change to the legislation as it would have a material impact on the functions of regulators and the nature of the Act. We expect that developing the specific powers afforded to the Minister and/or Ministry of Health would be a contentious process, as it would spark a broader debate on the role of government and independence in regulatory decision-making.
18. Under this more limited option we would miss out on other opportunities to improve the regulatory system, such as introducing a model of proportionate regulation or more effective form and function changes.

19. Consideration would also need to be given to whether such minor changes would make sufficient progress towards meeting the expectations of the coalition agreements, such as to better recognise people with overseas medical qualifications and experience for accreditation in New Zealand (in coalition agreements with NZ First and the ACT party). The ACT party coalition agreement also indicated consideration of an occupations tribunal.

s 9(2)(f)(iv)

Option 2: medium HPCA Act amendment bill s 9(2)(f)(iv) develop policy through legislative process)

20. The second option is to introduce an initial amendment bill s 9(2)(f)(iv), where much of the policy and legislative development occurs during the legislative process after introduction of the bill. This timeframe for delivery would be similar to that in Table 1.
21. To achieve this timeframe, the proposals and drafting would focus on significant amendments to the more substantive regulatory setting changes. This would include the regulatory form and functions, such as proposals for new entities, Ministerial oversight, and accountability.
22. For the bill to be introduced s 9(2)(f)(iv), you would need Cabinet policy decisions s 9(2)(f)(iv). This expedited timeframe limits the ability for detailed legislative drafting by the Parliamentary Counsel Office (PCO). As such, you will be required to seek

Cabinet agreement throughout the legislative process on specific provisions as they arise. These decisions would likely include:

- a. Funding implications
- b. Detail of Ministerial levers, including process to review regulatory decisions
- c. Functions, roles and responsibilities of system actors (e.g. Minister, regulators)
- d. Disciplinary processes
- e. Transition arrangements.

23. We expect that this approach would lead to a long and complex select committee process, as it would play a dual role as a forum for policy development. The incomplete policy decisions reflected in the bill would likely leave the sector with many questions on the proposals in the bill and any other changes under consideration. Similarly, under this option, public consultation would only be through the select committee process.

24. s 9(2)(g)(i)



25. Furthermore, we do not expect that an earlier introduction of the bill would necessarily lead to an earlier implementation and realisation of the benefits. With structural changes or new regulatory oversight roles, planning how these will be transitioned to, and new roles and functions given effect to, will be a key part of implementation.

26. For example, if the changed approach had more government direction and funding for functions that support the health system, this would enable overseas assessment work to be prioritised, but would still take time to implement. Changes to the process for overseas accreditation need to be robust and evidence driven, so that those within health providers making hiring decisions have confidence in overseas-qualified registrations.

Option 3: New legislation s 9(2)(f)(iv) – preferred option

27. s 9(2)(f)(iv)



28. It remains the Ministry's position that a significant shift in how we regulate the health workforce is required to address long-standing issues and increase access to timely and quality health services.

29. The Ministry has commenced targeted engagement with key stakeholders to develop policy proposals. Under this option, we expect to provide you with policy proposals on the approach to workforce regulation s 9(2)(f)(iv) to consider and seek agreement from your Cabinet colleagues, to begin public consultation s 9(2)(f)(iv)

30. The planned release of a public consultation document s 9(2)(f)(iv) would enable the Government to clearly set out the shifts and changes it expects to make to health

workforce regulation. This gives the Government an opportunity to publicly announce the change expectations, as part of a process seeking further input from professions, stakeholders, and the broader public.

31. s 9(2)(f)(iv) [REDACTED]
 [REDACTED] The bill would be of a higher quality and present changes to the health workforce regulatory system that would lead to tangible improvements to the lives of New Zealanders.
32. Presenting a fully developed bill would enable Ministry officials to commence necessary work on transition and implementation earlier, as they would not be developing policy through the select committee process.

Table 2. Summary of introduction options

	Option 1	Option 2	Option 3 (preferred)
Summary	Minor amendment to HPCA Act	Medium amendment to HPCA Act, develop policy through legislative process	New legislation

s 9(2)(f)(iv)

PCO requirements to draft a bill

33. The Parliamentary Counsel Office (PCO) and the Cabinet Manual provide guidance on the process of drafting and introducing legislation.
34. PCO requires Cabinet approval of policy positions before drafting a bill and only drafts bills that are on the legislative programme.
35. As new policy positions arise, you will need to take a paper to the appropriate Cabinet policy committee and get a new policy approval (this is pertinent to **Option 2** below).
36. PCO advises that, on average, it takes about 90 days to draft a 50-clause bill of medium complexity. We estimate that changes to regulatory structures, expectations, roles, and functions require legislative detail in a medium-sized bill.

Next steps

37. Following your direction, officials will ensure internal resources are directed to support this work programme.
38. Officials will continue to engage with PCO to confirm direction and prioritisation of a bill in conjunction with the broader legislative programme.
39. You may wish to update the Associate Ministers of Health on this work programme and forward future advice on policy proposals to them.

ENDS.

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