Briefing for decision

High-level settings for future health workforce regulation

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To:	Hon Dr Shane Reti, Minister of Health		
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Contact for telephone discussion

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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☐ See Minister's Notes ☐ Withdrawn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

High-level settings for future health workforce regulation

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To:	Hon Dr Shane Reti, Minister of Health		

Purpose of report

1. This briefing seeks your agreement to high-level settings for the future of health workforce regulation. The agreed purpose, underlying design principles, and regulatory governance will inform design options to be presented to you in the next briefing in November.

Summary

2. This paper builds on previous briefings on the review of the HPCA Act and the need for a new approach to health workforce regulation. We seek agreement to three key design elements for a health workforce regulatory system that is fit-for-purpose to meet the health needs of New Zealand.

3. We seek your agreement to:

   a. an expanded purpose, that while still focused on safety, acknowledges that regulation should be done in the context of the needs of the health system, including addressing workforce shortages,

   b. underlying design principles, including that workforce regulation should support innovation in practice and models of care, while being informed by professional knowledge, and

   c. providing for review and intervention powers, including powers to direct regulators and to intervene when regulators are not performing adequately.

4. We need your direction on these high-level provisions by **12 November** to inform the detailed paper and discussion document for your consideration on 22 November. This timeframe is necessary to get Cabinet approval for the discussion document (for SOU on s 9(2)(f)(iv)).

5. The discussion document, to be released in early 2025, will test and refine options for the future health workforce regulatory system.

Recommendations

We recommend you:

a) **Note** that regulating the health workforce is an important mechanism to protect the health and safety of New Zealanders. **Noted**

b) **Agree** the statutory purpose of the workforce regulatory system should be to protect the health and safety of the public by:

i)	Ensuring health practitioners are competent to practise	**Yes / No**
ii)	Ensuring workforce regulation supports the needs of the health system, including availability of practitioners	**Yes / No**

c) **Agree** the statutory framework should be informed by principles that set out that workforce regulation should:

i)	Support safe innovation in practice and models of care	**Yes / No**
ii)	Be informed by professional identities and knowledge	**Yes / No**
iii)	Support the health system to protect, promote, and improve health	**Yes / No**
iv)	Be proportionate and cost-effective	**Yes / No**

d) **Agree** the statutory framework include governance provisions to support high quality, consistent regulation, including:

i)	High level strategic direction via the Government Policy Statement on Health or similar mechanism	**Yes / No**
ii)	Mechanisms for more detailed priority setting	**Yes / No**
iii)	Review and intervention provisions allowing the Ministry to monitor, and you to intervene in extremis	**Yes / No**
iv)	Provisions setting out how workforce regulators must work together to promote cohesion and consistency	**Yes / No**

f) **Note** that these high-level settings will inform design options that the Ministry of Health will provide you in an upcoming briefing. **Noted**

Maree Roberts
Deputy Director-General
Strategy, Policy and Legislation
Date: 5 November 2024

Hon Dr Shane Reti
Minister of Health
Date:

High-level settings for future health workforce regulation

Background

The need for health workforce regulation

1. Occupational regulation is a tool used by governments to uphold public safety and maintain public confidence in professions where there is a risk of harm. It protects consumers where they cannot judge the competence of a practitioner for themselves. In New Zealand, a range of industries are subject to some form of occupational regulation, including engineering, aviation, construction and legal professions.

2. The health workforce carries a high level of risk of harm to the public, thus warranting an appropriate level of regulation. Occupational regulation is a feature of the health systems in many comparable jurisdictions, including Australia, Canada, the United Kingdom, and the United States.

A new approach to health workforce regulation: The case for change

3. The Health Practitioners Competence Assurance Act 2003 (the HPCA Act) is an enabling piece of legislation, based on self-regulation for recognised professions. While there are benefits to this, it has resulted in a siloed regulatory system consisting of 18 separate regulators (responsible authorities, RAs), each of which has adopted a different approach to regulating its part of the health workforce. Importantly, this regulatory system does not reflect the ways in which health care is delivered today. Present-day models of care rely on the collaborative efforts of multidisciplinary teams and are not siloed according to a practitioner's profession.

4. As our approach to delivering health care evolves, so too must the system that is responsible for regulating it. Presently, the functions of RAs (eg, standard-setting and accreditation) are often performed in isolation of each other. The current system, which takes a narrowly profession-specific view of regulation, is not set up to respond to the complexities of today's multidisciplinary approach to delivering care.

5. In its current form, the HPCA Act makes little provision for regulatory governance. Therefore, because of the independence of RAs from government, there are limited mechanisms to ensure regulatory accountability, collaboration, and coordination. Although the Ministry of Health (the Ministry) is responsible for administering the HPCA Act, it has few levers to influence and support RAs. This challenges the Ministry's ability to perform its role as steward of the health system, including to provide strategic direction and promote wider system needs.

6. There are also concerns about the financial sustainability of some of the regulators in the current system. For some RAs, a significant proportion of funds must be reserved for potential disciplinary actions, which inhibits regulatory innovation and improvement in areas such as processing registration applications.

Summary of targeted engagement

7. Ministry of Health officials have conducted targeted engagement with key stakeholders on this work programme, including RAs, professional associations, Māori professional associations, Hauora Taiwhenua Rural Health Network, self-regulating professions, the Council of Medical Colleges and unions.

8. Key themes from consultation included:

   a. Any changes to the regulatory system must not compromise patient safety;

   b. There are opportunities for greater collaboration across professional regulators;

   c. Professional identity and profession-specific expertise must be retained in the regulatory system;

   d. Regulatory decisions should align with health system priorities and direction.

9. These themes are reflected in the purpose, principles and regulatory governance proposals in this paper.

A future health workforce regulatory system

10. Patient safety should remain at the core of the future regulatory system. We expect reform to entail a new piece of legislation, but with much of the content of the current Act replicated. Parliamentary Counsel advise that a new piece of legislation would be best to ensure the statute reflects modern legislative practice.

11. We expect to retain most of the existing functions that are central to a health workforce regulatory system, for example registration, setting scopes of practice, discipline, etc. Instead, we are looking at the environment in which those decisions are being made to ensure the regulatory functions are being performed in line with the needs of the whole health system. As such, we expect that much of the processes and functions in the current Act would remain, with focused changes centred on the high-level settings discussed in this briefing.

12. There is an opportunity to improve this basic regulatory machinery rather than simply replicate it. We have been discussing potential improvements with the responsible authorities, who have many suggestions. We expect to recommend substantial improvements to these routine settings early next year, following the anticipated general consultation.

New regulatory content

13. To develop proposals for a new approach to health workforce regulation, we have initially considered three fundamental design considerations:

   a. Purpose of regulatory system;

   b. Underlying design principles; and

   c. Regulatory governance.

14. To meet your desired timeframe for Cabinet decisions in s 9(2)(f)(iv) this year and s 9(2)(f)(iv) we need your direction on the high-level settings in this paper. These high-level decisions will inform options for a new regulatory system for your consideration in November, and Cabinet consideration s 9(2)(f)(iv)

Purpose of regulatory system

15. Purpose statements in legislation are important guides to how the provisions of an act should be interpreted. The purpose of the HPCA Act is "to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions."

16. Protecting the health and safety of members of the public should remain the primary purpose of any future regulatory system. However, the current system's stated focus on practitioner competence and fitness to practise is a narrow interpretation of the role of regulation in ensuring patient safety.

17. Wider system issues, such as shortages of health workers, may pose as great a risk to public safety as the standards applied to the workforce. Our current regulatory system gives little regard to the risk to patient safety posed by health services being unavailable or inaccessible.

Our proposal

18. We propose that the purpose of a future health workforce regulatory system include responding to wider system priorities, in addition to ensuring that health practitioners are competent and fit to practise their professions. This is a key change, which would require regulators to take a broader view of decisions and in particular, consider things like the availability of practitioners, and how regulation can respond to a modern, multidisciplinary team approach.

19. This is in line with international approaches to health workforce regulation, as identified in the World Health Organization. It noted that the most commonly stated objective of health workforce regulation was to promote patient safety, adding that contemporary regulation considered other priorities such as access to services, workforce distribution, and promoting interdisciplinary cooperation.

20. There has been a general recognition during our targeted stakeholder engagement of the need for regulatory decisions to consider wider system priorities. Indeed, the RAs contend that they already take a systems approach to decision-making, and noted a desire for more information from Government on system priorities.

21. The purpose statement would be something along the lines of: "the purpose of this Act is to promote the health and wellbeing of the public by ensuring health practitioners are competent to practise, and that health workforce regulation supports overall health system priorities". The precise wording will be determined by the Parliamentary Counsel Office.

Is there anything else you would like to see in the purpose statement?

Underlying design principles

22. Although the HPCA Act does not explicitly state any principles, it is evident that central to its drafting were the principles of regulatory independence from government, the

primacy of individual professions, practitioner competence, standard of practice, and standard of qualification.

23. When the HPCA Act was initially drafted, sector stakeholders were concerned that the Act, which replaced 11 different occupational registration statutes, shifted a significant amount of power away from the professions. At the time, it was noted that the professions themselves are in the best position to determine which activities can be safely performed under different roles. Parliament therefore decided to leave the responsibility for managing the professions and setting scopes of practice with individual authorities.

24. The principles underpinning the HPCA Act remain relevant to the design of the future health workforce regulatory system. However, contemporary perspectives on 'public interest' as it relates to regulation add to these principles by including matters such as 'alignment with health system needs', 'increased efficiency and cost effectiveness of the regulatory system', and 'regulation that is proportionate to risk'.

25. The application of these principles in the design of health workforce regulatory systems internationally are varied, to meet the needs of their unique contexts.

Our proposal

26. In line with this trend, we propose the following principles to inform the design of the future health workforce regulatory system:

    a. The design of the regulatory system should support an innovative and adaptable workforce;

    b. Professional identity and profession-specific knowledge are important to the regulation of the health workforce. As such, profession-specific knowledge and expertise should inform regulation;

    c. The regulatory system should uphold the health sector principles in the Pae Ora (Healthy Futures) Act;

    d. The regulatory system should be efficient and sustainable;

    e. Regulation should be proportionate to the risk to public safety.

27. These principles draw from international trends and what we have heard through our targeted engagement. For example, maintaining professional identity was important for many stakeholders.

28. We do not, at this stage, anticipate having explicit principles in the legislation. Generally, decision-making principles are required where there are multiple decision-makers with a large degree of independence. we think it is likely that there will be strong powers of direction and probably an oversight entity that could be easily directed on the matters that would otherwise be contained in statutory principles.

Are there any other principles would you like us to consider in the design of the regulatory system?

Governance framework

29. The current legislation is based on the principle that health professions are best placed to set standards for and regulate themselves, independently of government. While this ensures that there is the appropriate professional expertise applied to decisions, it means that decisions are made without regard to broader health system needs, and performance is variable, with limited ability to intervene.

30. There is no specific statutory power or authority to directly address concerns expressed about an RA's performance. The Act was amended in 2019 to provide for routine performance reviews, but they are of a broad, routine nature and, on the whole, neither RAs nor the Ministry found the first round of reviews to be broadly effective in prompting improved performance.

31. International experience shows that a lack of transparency in profession-led regulatory schemes can allow for practitioners' interests to be prioritised over public welfare. For instance, overly restrictive entry requirements may be established to create unnecessary barriers to market entry, thereby inflating the wages and income of the incumbent practitioners at the expense of the public and government.

32. In jurisdictions where the regulation of health practitioners has traditionally been led by professions (ie, similar to New Zealand), there has been a shift towards government oversight of professional regulators.

Our proposal

33. We propose establishing a governance framework that strikes a balance between profession-led regulation and state oversight. The key features of such a system would be:

    a. The governance framework would create a mechanism to provide **all-of-system strategic direction** to regulators, so that they advance broader health system priorities through their regulatory remit. For example, this could explicitly link regulators to the Government Policy Statement on Health (the GPS) or a similar mechanism.

    b. The ability to provide strategic direction would be coupled with appropriate **monitoring and reporting mechanisms**, to ensure accountability. Expanding and strengthening these mechanisms would provide an opportunity to identify important metrics against which the performance of regulators could be measured.

    c. The governance framework would embed **cross-profession cohesion, decision-making and implementation of the strategic direction**. For example, reducing the number of regulators and establishing some cross-profession regulators would support more consistent standards across professions.

    d. Finally, the governance framework would allow some form of intermediate **intervention** where performance was inadequate. For example, this might be a power to require independent review of a scope of practice or competency standard.

34. We expect that this type of governance structure would lead to more regulatory coherence, greater cross-profession decision-making, and stronger consultation

requirements. It would provide mechanisms to ensure that regulatory decisions contribute to wider health system priorities to improve timely access to quality services.

Are there any other elements would you like to see in the governance of the regulatory system?

Next steps

35. The Ministry will further refine the purpose, principles and regulatory governance proposals based on your feedback and through the public discussion document, for engagement in February 2025.

36. Your direction will inform the Ministry's briefing to you in November with regulatory design options.

37. In line with your expectations, we intend to seek Cabinet agreement on the preferred design option and a supporting discussion document s 9(2)(f)(iv)

ENDS