

Security classification: In Confidence

Office of the Minister of Health

Chair, Cabinet Legislation Committee

## **Health Practitioners Competence Assurance Amendment Bill: Approval for Introduction**

### **Proposal**

- 1 The Health Practitioners Competence Assurance Amendment Bill (the Bill) gives effect to decisions made following two separate reviews of the Health Practitioners Competence Assurance Act 2003 (the Act). The Bill will amend the Act to clarify its interpretation and improve its operation.

### **Policy**

- 2 The Act provides a framework for regulating health practitioners in order to protect the public where there is risk of harm from professional practice. The Act includes mechanisms to ensure that practitioners are competent and fit to practise their professions for the duration of their professional lives. There are 23 health professions currently regulated under the Act by 16 responsible authorities.
- 3 The Bill gives effect to decisions made following:
  - 3.1 an operational review required under the Act that was completed in 2009 [CAB Min (09) 19/5 and CAB Min (11) 36/1B refer]; and
  - 3.2 a further, strategic, review undertaken in 2012 to examine whether the underlying policy settings remained appropriate [CAB-15-MIN-0273 refers].
- 4 In 2011 an earlier version of the Bill was approved for introduction the following year [CAB Min (11) 36/1B refers] but was held over pending the results of the second review.
- 5 The Bill will amend provisions in the Act to:
  - 5.1 clarify that responsible authorities can act on and receive information (including complaints) from members of the public about the appropriateness of a practitioner's practice, conduct or competence;
  - 5.2 make information more available regarding orders made by an authority in respect of a health practitioner's competence or inability to perform required functions;
  - 5.3 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;
  - 5.4 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;

- 5.5 clarify that authorities are responsible for the running costs of the Tribunal;
  - 5.6 restrict interim suspension of a practitioner's practising certificate or registration to situations where there are reasonable grounds for believing a practitioner's conduct poses a risk of serious harm to the public;
  - 5.7 reduce the administrative burden of reporting requirements for quality assurance activities;
  - 5.8 clarify that provisions relating to unpaid fines, costs or expenses include those imposed under former legislation;
  - 5.9 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;
  - 5.10 give the Governor-General, on the recommendation of the Minister of Health, the power by Order in Council to amalgamate existing authorities when it is in the public interest;
  - 5.11 require an authority to promote and facilitate interdisciplinary collaboration and cooperation in the delivery of health services;
  - 5.12 introduce regular performance reviews for authorities;
  - 5.13 require authorities to provide to the Director-General of Health information that will assist with workplace planning and development;
  - 5.14 include a regulation-making power to declare a comprehensive list of responsible authorities and the professions in respect of which they are appointed. This will ensure that authorities are easily identifiable.
- 6 During the offences and penalties vetting, the Ministry of Justice suggested adding a defence of "without reasonable excuse" in respect of the offences for both section 92A and section 95 and this has been incorporated. No prosecutions have been brought in respect of the offence in section 95 and we are anticipating a similar outcome in respect of section 92A.
- 7 The Bill includes a penalty in the new section 92A (Chairperson may prohibit publication of names pending hearing of charge) to ensure consistency with section 95 (Hearing to be public unless Tribunal orders otherwise). The penalty will mean that anyone who contravenes an order issued by the Chairperson of the Health Practitioners Disciplinary Tribunal (the Tribunal) prohibiting publication of names or other details of a health practitioner and/or any other person pending the hearing of a charge, will be liable on conviction to a fine of up to \$10,000.
- 8 I am seeking approval for this change.
- 9 There are no further outstanding policy issues.
- Regulatory Impact Analysis**
- 10 A Regulatory Impact Statement was provided for the proposals resulting from the second review [CAB-15-MIN-0273 refers].

- 11 No Impact Statement was required for the proposals resulting from the first review. This was because the overall regulatory impact of the Act was considered when it was first presented to Cabinet in 2002. The provisions in the Amendment Bill resulting from the 2009 review are largely of a minor or machinery nature and do not substantially alter the regulatory impact of the Act.

## Compliance

- 12 The bill complies with:
- 12.1 the principles of the Treaty of Waitangi;
  - 12.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 12.3 the disclosure statement requirements (see the attached disclosure statement in Appendix 1;
  - 12.4 the principles and guidelines set out in the Privacy Act 1993, as confirmed by the Privacy Commissioner;
  - 12.5 relevant international standards and obligations;
  - 12.6 the *Legislation Design and Advisory Committee Guidelines on the Process and Content of Legislation* (2014 edition).

## Consultation

- 13 The following government agencies and other public bodies have been consulted in the development of this paper: Accident Compensation Corporation, Department of the Prime Minister and Cabinet, Health and Disability Commissioner, Health Practitioners Disciplinary Tribunal, Ministry of Social Development, Ministry for Children Oranga Tamariki–Ministry for Children, Ministry of Business, Innovation and Employment, Ministry of Justice, Office of the Privacy Commissioner, State Services Commission and the Treasury.

### *First Review*

- 14 During 2007 – 2009, the Ministry of Health consulted with responsible authorities, health service providers, professional bodies, unions, educators and individual practitioners on the operation of the Act and published the results.
- 15 The Director-General’s report to the Minister concluded that overall, the Act is operating well. A number of recommendations were made to improve the operation of Act, including the legislative amendments in this Bill. A strategic review of the Act was also recommended to examine whether the underlying policy settings remained appropriate.

### *Second Review*

- 16 The strategic review of the Act began in 2012 with a public consultation process and a discussion document covering a wide range of issues. The Ministry of Health received and analysed 145 submissions.

- 17 This initial consultation was followed by four focus groups and a teleconference. Participants included responsible authorities, the Office of the Health and Disability Commissioner, the Health Practitioners Disciplinary Tribunal, health providers, professional associations, union representatives and consumers. In 2015, meetings were held with responsible authorities to discuss data collection to support workforce development and planning.
- 18 The general conclusion from the consultation was that the Act is working well but five key areas were identified where legislative change could enhance the Act. The five areas all related to the role and functions of the responsible authorities and were to:
- 18.1 provide an assurance to the public and the Crown that the responsible authorities are carrying out their functions as intended, focused on the principal purpose of the Act and are not at risk of regulatory capture
  - 18.2 improve transparency about disciplinary proceedings relating to practitioners
  - 18.3 provide greater recognition of the importance of team work and team communications across multi-disciplinary health practitioners
  - 18.4 enshrine the principles of transparency, integrated care, workforce flexibility and workforce planning
  - 18.5 improve workforce data collection on which to base health workforce planning.

### **Binding on the Crown**

- 19 The Act binds the Crown.

### **Allocation of decision making powers**

- 20 Not applicable

### **Associated regulations**

- 21 Not applicable

### **Other instruments**

- 22 The Bill includes a regulation-making power to declare a comprehensive list of responsible authorities and the professions in respect of which they are appointed. This will ensure that authorities are easily identifiable. The reasons for these powers are set out in the explanatory note to the Bill

### **Definition of Minister/department**

- 23 Not applicable

### **Commencement of legislation**

- 24 The bill will come into force on the day after the date of Royal assent.

### **Parliamentary stages**

- 25 The bill should be introduced by 31 March 2018 and it should be passed by 31 March 2019.

26 It is proposed that the bill be referred to the Health Select Committee.

### **Recommendations**

The Minister of Health recommends that the Committee:

- 1 note that the Ministry of Health has sought a category 5 priority on the 2018 Legislation Programme (to be referred to a Select Committee in 2018) for the Health Practitioners Competence Assurance Amendment Bill;
- 2 note that the Bill amends the Health Practitioners Competence Assurance Act to clarify its interpretation and improve its operation;
- 3 agree to the inclusion of a penalty for the offence in the new section 92A of the Health Practitioners Competence Assurance Act 2003;
- 4 approve the Health Practitioners Competence Assurance Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 5 agree that the Health Practitioners Competence Assurance Amendment Bill be introduced by 31 March 2018;
- 6 agree that Government propose that the Health Practitioners Competence Assurance Amendment Bill be:
  - 6.1 Referred to the Health Committee for consideration;
  - 6.2 Enacted by 31 March 2019.

Authorised for lodgement

Hon Dr David Clark

Minister of Health