

Changes made in response to submissions regarding core performance standards for responsible authorities

Citation: Ministry of Health. 2020. *Changes made in response to submissions regarding core performance standards for responsible authorities*. Wellington: Ministry of Health.

Published in September 2020 by the Ministry of Health
PO Box 5013, Wellington 6140, New Zealand

ISBN 978-1-99-002935-6 (online)
HP 7456



This document is available at health.govt.nz



This work is licensed under the Creative Commons Attribution 4.0 International licence. In essence, you are free to: share ie, copy and redistribute the material in any medium or format; adapt ie, remix, transform and build upon the material. You must give appropriate credit, provide a link to the licence and indicate if changes were made.

Contents

Process of consideration	2
Changes made	3
Other feedback	4

Process of consideration

As we noted in our *Summary of submissions regarding core performance standards for responsible authorities*¹ document, much of the feedback we received supported our proposals and overall approach. Some submitters expressed concerns that in some areas the proposed terms of reference or standards were inadequate or incomplete or went beyond the legislated mandate. Where we received conflicting feedback, we carefully weighed and considered the different arguments before making a decision as to whether or not we should make any change. A group of Ministry staff reviewed substantive issues before intended revisions were introduced at a meeting with the responsible authorities. We made further changes based on those discussions and, finally, Health Legal reviewed the document.

1

Changes made

We made the following substantive changes in response to the feedback we received. We:

- added a reference to section 122A of the Health Practitioners Competence Assurance Act 2003 (HPCA Act) as providing the mandate for the reviews
- added a new 'guiding principle' that the performance reviews will consider how well the responsible authorities' approach reflects the principles of te Tiriti o Waitangi / the Treaty of Waitangi
- added a reference for the source and definition of te Tiriti principles to the standard related to section 118(m) of the HPCA Act
- clarified the circumstances that may trigger a smaller, tailored review
- emphasised the need for reviews to include consultation with key stakeholders
- expanded the description of the Ministry's role and responsibilities
- added a bullet point to the standard relating to section 118(d) of the Act – 'promote the competence of health practitioners'.

Other feedback

In other areas, the feedback we received was not sufficient to convince us to make changes.

- One submitter argued that:
 - the proper scope of a performance review is to determine how effectively and efficiently a responsible authority is performing its functions, and that this assessment must be made in the context of the authority's legal obligations
 - the Treaty of Waitangi is not part of New Zealand domestic law, except where its principles are explicitly referred to in Acts of Parliament
 - the HPCA Act, under which responsible authorities perform their functions, does not refer to the principles of the Treaty of Waitangi
 - responsible authorities are not part of the Crown and are not parties to the Treaty
 - responsible authorities are therefore not obliged to ensure that the principles of the Treaty of Waitangi are followed in the implementation of their functions
 - accordingly, it is not relevant for a performance review to consider whether or not an authority demonstrates compliance with the principles of the Treaty or applies the principles of Right-touch regulation when that performance review must assess the efficient and effective performance of the authority's functions.

We considered this submission carefully, alongside the extensive counter-arguments other submitters made in favour of including clear reference to Tiriti. In our view, while responsible authorities currently have no legal obligation to engage with te Tiriti principles, it is imperative that they do so in order to achieve the purpose of the HPCA Act; that is, to protect the health and safety of members of the public. A performance review will assess how effectively a responsible authority is performing its functions, and we consider attention to te Tiriti principles is fundamental to any possibility of being effective. We also consider that the principles of Right-touch regulation are a fair reflection of current best practice in the regulation of health professions.

- We received conflicting feedback on the breadth and depth of reviews. We consider that the current approach is appropriate, striking a balance between achieving meaningful and productive reviews and making them manageable, sustainable, and affordable.
- We have retained the option of conducting smaller, tailored reviews where a previous review has noted concerns. This option allows for a less intrusive response than a full audit (under section 124 of the HPCA Act).
- We are still finalising the details around who may be appointed to conduct the reviews, in consultation with the responsible authorities, and are actively considering the feedback received. (Much of that feedback is consistent with what we have proposed.)

- Submitters suggested that reviews should be conducted more frequently, but we have decided to make no such change to the legislation at present. We note that section 122A of the HPCA Act only specifies a **minimum** frequency, so it allows for more frequent reviews.
- Some submitters suggested that a responsible authority should have an opportunity to comment on more than just factual errors in a draft report before it is finalised. Section 122B of the HPCA Act provides for an authority to comment on any recommendations made following a review, and to decline to implement recommendations. We consider this provision to be adequate.
- Many submissions noted concerns about the costs of the reviews. We believe that the proposals made will ensure that the reviews are affordable and sustainable. As noted above, we continue to work with the responsible authorities to finalise the details of who will conduct the reviews, which will impact on cost.
- Submitters also expressed concerns about appointments to the responsible authorities' councils and boards. This is not, however, a function of the authorities, as the Minister of Health makes these appointments.
- At this time, we have not followed up suggestions that would require changes to the HPCA Act, given the Act was only recently reviewed and amended. We will, however, be taking an iterative, continuous improvement approach to the reviews and will conduct a detailed evaluation of the terms of reference and standards after the first round of reviews has been completed.

Prepared by: Steve Osborne
Principal Advisor, Health Workforce
Version: 10/08/20