

Core Performance Standards for Responsible Authorities

Consultation document

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Background

When the Health Practitioners Competence Assurance Act 2003 (the Act) was amended in 2019, the requirement for independent performance reviews of responsible authorities (refer s 122A of the Act) was introduced.

This is in line with international trends in health occupational regulation and include:

- strengthening consumer protection
- standardising legislation and institutional design
- improving the overall performance of regulators.

Rationale for performance reviews

In 2009 the Act was reviewed, and the Director-General of Health reported on the results of the review to the Minister of Health. The report noted concerns about the performance and decisions of some responsible authorities.

Some of these concerns arose through inadequate understanding of the roles and responsibilities of responsible authorities, while others related to poor communication with stakeholders. The report suggested the Ministry could:

- educate people about the Act and the functions of responsible authorities
- develop, in consultation with the responsible authorities and sector stakeholders, a set of indicators of best practice to measure authorities' effectiveness
- have a role, if a Minister of Health chooses, to use the power to audit an authority (refer s 124 of the Act).

A 2014 Ministry of Health report *The Case for Change*¹ noted there was considerable variation in performance and transparency across the responsible authorities. Prior to the 2019 amendments, the settings of the Act did not allow the Crown to assert with confidence that any or all responsible authorities are carrying out their functions as intended and that they rigorously regulate to protect the health and safety of members of the public.

The establishment of professional regulation under the Act seeks to strike a balance between professional and public-led processes. There is a risk that this balance may not be appropriately maintained, and that a responsible authority could become subject to a level of regulatory capture that may undermine impartiality.

Jurisdictions overseas tend to provide more scrutiny of their health regulators than currently happens in New Zealand. For example, in the United Kingdom the Professional Standards Authority scrutinises and oversees the nine organisations that regulate health professionals.

¹ See <https://www.health.govt.nz/our-work/regulation-health-and-disability-system/health-practitioners-competence-assurance-act/review-health-practitioners-competence-assurance-act/case-change>

In New Zealand, an oversight body like the Professional Standards Authority may not be the best solution because such an independent body would significantly add to the costs of regulating health practitioners. However, the issue of oversight and assurance remains and an alternative means of assuring the integrity and effectiveness of regulation needs to be developed.

Independent performance reviews will help improve confidence in responsible authorities and the HPCA Act, in an affordable and sustainable way.

Issues to be addressed

While New Zealand's responsible authorities have a strong knowledge and understanding of the Act, health practitioners sometimes appear to not recognise that the Act's purpose is essentially outward – on protecting the safety of the public – rather than inward – on prioritising the welfare of the profession.

Consumers of health services and the wider public are generally not well informed about how the Act protects them, how it relates to their health care needs, and what part they can in its effectiveness.

Public information about the Act is available on the Ministry of Health and responsible authority websites. Some of the information appears to focus on needs of health professionals rather than those of consumers. Information is not written in plain English and, in many instances, is hard to find. The information that is available tends to be fragmented across professions, rather than giving an overview of how the provisions of the Act can respond to consumers' needs and concerns.

There is a contrast between the lack of information about the Act provided by the responsible authorities and the information people can access regarding the Health and Disability Commissioner's role.

Transparency and impartiality

As well as knowing that the Act exists to protect the safety of the public, stakeholders – practitioners, consumers, and employers – need to know that using the provisions in the Act will have timely, consistent, and impartial outcomes. They can only have this confidence if there is a level of transparency about the operations of responsible authorities that provides evidence of such outcomes.

Currently, transparency varies between responsible authorities and it is hard to judge levels of timeliness, consistency, and impartiality. Responsible authorities are not Crown entities and are not subject to the Official Information Act 1982 and stakeholders cannot use it to find out about responsible authorities' policies, procedures, and decisions.

There is little guidance for responsible authorities in the HPCA Act about transparency. Specific provisions in the Act address natural justice and privacy considerations for both practitioners and complainants in some circumstances but allows for greater transparency in other circumstances.

In the past, responsible authorities have agreed that they could contribute to increased public safety by enhancing transparency.

As noted above, the public sometimes perceive responsible authorities as preserving the interests of their registrants rather than protecting the health and safety of consumers. Professor Ron Paterson says in his book *The Good Doctor: What Patients*

*Want*² 'secrecy risks undermining public confidence in the health profession and disciplinary procedures'. He notes that, from time to time, there are cases where complainants or consumers publicly question the impartiality of regulators.

Contrast this with the practice of other bodies involved with health practitioner regulation. In the UK, the Professional Standards Authority provides explicit information about their expectations of health regulators. Subsequently, UK regulators are more transparent about their work than are New Zealand's responsible authorities, and they appear to achieve an appropriate balance between transparency and individual privacy rights. For example, since 2005 the UK's General Medical Council has provided a complete history of each medical practitioner's registration status, including details of any erasure or suspension from the register, and any conditions, voluntary undertakings, and warnings that have been set for the practitioner as a result of investigations or hearings. Except where there are privacy issues that outweigh the public's interest (usually practitioner health issues), the minutes of the panels are available to the public.

Since 2010 the Australian Health Practitioner Regulatory Agency publishes all its panel decisions regarding health practitioners. In addition, summaries of findings are provided where there is educational and clinical value. Practitioners' names are not published.

In New Zealand, the office of the Health and Disability Commissioner publishes its decisions and case notes in full detail, subject to privacy considerations. Naming health practitioners is subject to a naming policy that protects most individual practitioners without depriving the public of knowledge of the basis of the Commissioner's decisions. In the case of the Health Practitioners Disciplinary Tribunal, hearings are public unless there is clear reason why they should not be. Decisions and penalties are published online.

With the increased interest in protecting the public, there is an international trend towards more public engagement, improved transparency of complaints and complaint processes, and transparency of information. New Zealand risks falling behind in this regard.

Cabinet's agreement on performance reviews

In 2019 Cabinet agreed that responsible authorities would be subject to five-yearly performance reviews.

The regulatory impact statement that accompanied the Cabinet paper sets out more detail for developing a performance review programme. A summary of key points is provided below.

- Performance reviews should provide the Crown and the public assurance that responsible authorities are carrying out their required functions in the interests of

² Professor Ron Paterson. 2012. *The Good Doctor: What Patients Want*. Auckland: Auckland University Press.

public safety, that their activities focus on protecting the public without being compromised by professional self-interest, and that their overall performance is conducive to high public confidence in the regulatory system.

- Performance reviews should be required every five years with the terms of reference being set at least three years before the review takes place.
- A schedule should be developed so that not all responsible authorities undergo performance review in the same year.
- The Ministry of Health should develop the terms of reference in consultation with responsible authorities, considering the views of stakeholders (including employers, professional associations, and consumer organisations).
- Performance monitoring should focus on learning and continual improvement (rather than a tick-box exercise).
- The cost of a performance review should be met by the responsible authority (effectively by health practitioners and their employers). [Aside: The need for core standards and for safe, quality services does not diminish with the size of the profession. A health regulatory system needs to ensure that resources within the system appropriately address risk. Reviews must therefore be manageable and sustainable for any authority.]
- The Ministry should appoint reviewers in consultation with the responsible authorities.
- Responsible authorities should be required to make the reviewer's final report available on their websites.
- The Minister would respond to the performance reviews and may require a responsible authority to respond to concerns following a review.

Legislative requirement for performance reviews

From the Health Practitioners Competence Assurance Act 2003

122A Performance reviews

- (1) From time to time, there must be conducted in respect of each authority a review of how effectively and efficiently the authority is performing its functions (a **performance review**).
- (2) The first performance review must be conducted within 3 years after the commencement of this section.
- (3) Subsequent performance reviews must be conducted at intervals that are no more than 5 years apart.
- (4) For each performance review to be conducted in respect of an authority, the Ministry of Health must, in consultation with the authority,—
 - (a) appoint an independent person to conduct the review (a **reviewer**); and
 - (b) set the terms of reference for the review.
- (5) Before setting the terms of reference for a review, the Ministry of Health may, but is not obliged to, consult any other person, organisation, or group about the terms of reference.
- (6) A reviewer must, as soon as practicable after conducting a review,—
 - (a) prepare a written report on the conclusions reached and of any recommendations; and
 - (b) give a copy of the report to—
 - (i) the Minister; and
 - (ii) the authority.
- (7) On receipt of a report under subsection (6)(b)(ii), an authority must, as soon as practicable, publish the report on its Internet site.
- (8) The costs of conducting a performance review in respect of an authority must be met by the authority.

122B Information about implementation of recommendations to be included in annual report

- (1) If a performance review has been completed in respect of any authority during the first 6 months of the authority's financial year and the report prepared under section 122A(6)(a) in respect of that review contains recommendations, the authority must include in its annual report for that financial year delivered to the Minister under section 134 the information specified in subsection (3).

- (2) If a performance review has been completed in respect of any authority during the last 6 months of the authority's financial year and the report prepared under section 122A(6)(a) in respect of that review contains recommendations, the authority must include in its annual report for the following financial year delivered to the Minister under section 134 the information specified in subsection (3).
- (3) The information referred to in subsections (1) and (2) is—
 - (a) which of the recommendations the authority—
 - (i) proposes to implement; and
 - (ii) does not propose to implement; and
 - (b) the time frame for implementing the recommendations identified under paragraph (a)(i); and
 - (c) the reason for not implementing the recommendations identified under paragraph (a)(ii).

Functions of the responsible authorities

The Health Practitioners Competence Assurance Act 2003 sets out New Zealand's framework for regulating certain health professions and practitioners to protect the health and safety of the New Zealand public.

The functions of each authority appointed in respect of a health profession are as follows:³

- (a) to prescribe the qualifications required for scopes of practice within the profession, and, for that purpose, to accredit and monitor educational institutions and degrees, courses of studies, or programmes:
- (b) to authorise the registration of health practitioners under this Act, and to maintain registers:
- (c) to consider applications for annual practising certificates:
- (d) to review and promote the competence of health practitioners:
- (e) to recognise, accredit, and set programmes to ensure the ongoing competence of health practitioners:
- (f) to receive information from any person about the practice, conduct, or competence of health practitioners and, if it is appropriate to do so, act on that information:
- (g) to notify employers, the Accident Compensation Corporation, the Director-General of Health, and the Health and Disability Commissioner that the practice of a health practitioner may pose a risk of harm to the public:
- (h) to consider the cases of health practitioners who may be unable to perform the functions required for the practice of the profession:
- (i) to set standards of clinical competence, cultural competence (including competencies that will enable effective and respectful interaction with Māori), and ethical conduct to be observed by health practitioners of the profession:
- (j) to liaise with other authorities appointed under this Act about matters of common interest:
- (ja) to promote and facilitate inter-disciplinary collaboration and co-operation in the delivery of health services:
- (k) to promote education and training in the profession:
- (l) to promote public awareness of the responsibilities of the authority:
- (m) to exercise and perform any other functions, powers, and duties that are conferred or imposed on it by or under this Act or any other enactment.

³ Refer s 118 of the Health Practitioners Competence Assurance Act 2003 (as amended in 2019).

General terms of reference for performance reviews

Preamble

These General terms of reference set the high-level requirements for performance reviews. More detailed requirements for each review will be set by the Ministry in consultation with the responsible authority being reviewed.

Purpose of performance reviews

Performance reviews provide the Crown and the public assurance that responsible authorities:

- are carrying out their required functions in the interests of public safety
- that their activities focus on protecting the public without being compromised by professional self-interest
- that their overall performance is conducive to high public confidence in the regulatory system.

Performance reviews also support and facilitate responsible authorities to develop capability and quality improvement efforts.

Guiding principles

Performance reviews will:

- provide the Crown and the public better visibility of how efficiently and effectively responsible authorities are performing their functions under the Act
- consider how well responsible authorities are performing their functions in relation to protecting the health and safety of members of the public, with specific reference to and emphasis on protecting the health and safety of Māori
- consider how well the responsible authorities' approach reflects the six principles of Right Touch regulation: Proportionate, Consistent, Targeted, Transparent, Accountable, and Agile⁴
- focus on a responsible authority's ability to be forward looking, proactive, and responsive

⁴ For details about Right Touch regulation see: <https://www.professionalstandards.org.uk/what-we-do/improving-regulation/right-touch-regulation>

- be useful to responsible authorities and should facilitate their continued competence and improvement
- be cost-effective and must be affordable, manageable, and sustainable for every responsible authority
- be cognisant of stakeholder interests, including:
 - the public
 - Māori
 - health practitioners
 - educators
 - institutions (including employers).

Prescribed performance standards will be:

- aligned to responsible authorities' functions (refer s 118 of the Act)
- outcomes and/or output based, with an emphasis on qualitative over quantitative measures
- focused on outcomes and outputs that are within the responsible authority's control.

Nature of review

Periodic performance reviews are mandated under s 122A of the HPCA Act. They will involve an independent, systematic, objective, and documented review of a responsible authority's performance and the extent to which that responsible authority meets the prescribed performance standards (refer Appendix 1). While formal and evaluative, performance reviews will be carried out in a collegial manner and allowance will be made to provide both evaluative and formative feedback.

Scope of performance review and methodology

Performance reviews will normally assess a responsible authority's performance against the full set of *Core Performance Standards*. More focused, tailored reviews may also be conducted where recommended, following an earlier performance review. The review methodology will be determined for each review but, in general, will involve a self-assessment process by the responsible authority, followed by external review and validation.

Roles and responsibilities

Reviewer(s)

Performance reviews will be conducted under the Ministry of Health's HSII-QAS-HealthCERT framework. Reviewers will be appointed based on expertise and experience in conducting reviews, knowledge and awareness of the regulation of health

practitioners in New Zealand, cost-effectiveness and affordability, and capacity to manage the work required.

Responsible authorities

The responsible authority being reviewed will submit a self-assessment prior to the scheduled site visit and will designate someone to serve as liaison between the responsible authority and the reviewer. The responsible authority will provide meeting space for the reviewer while on site.

Schedule for first round of performance reviews

The proposed schedule for the first round of reviews will be determined by the Ministry, in consultation with the responsible authorities. The schedule may subsequently be altered by the Ministry where necessary (eg, to accommodate a reviewer's availability or unforeseen disruptions) and following further consultation with the affected responsible authorities. A minimum of 12 months' prior notice of a review will be provided whenever practicable.

Reporting

The reviewer must, as soon as practicable after conducting a performance review, write a report on their conclusions and any recommendations. A draft report will be provided to the responsible authority for comment on any factual errors, prior to completion. The completed report will then be submitted to the Minister (via Health Workforce) and the responsible authority. The report will clearly state, in relation to each standard, whether that standard has been met, partially met, or not met. The report should also highlight any areas of learning that may benefit all responsible authorities and may make recommendations to other agencies.

Costs

The costs of review shall be met by the responsible authority being reviewed.

Appendix 1: Performance review standards

	Functions under section 118 of the HPCA Act	Related standards
a	To prescribe the qualifications required for scopes of practice within the profession, and, for that purpose, to accredit and monitor educational institutions and degrees, courses of studies, or programmes.	<p>The responsible authority:</p> <ul style="list-style-type: none"> • has defined clear and coherent competencies for each scope of practice • has prescribed qualifications aligned to those competencies for each scope of practice • has timely, proportionate, and transparent accreditation and monitoring mechanisms to assure itself that the education providers and programmes it accredits deliver graduates who are competent to practise the relevant profession • takes appropriate actions where concerns are identified.
b	To authorise the registration of health practitioners under this Act, and to maintain registers.	<p>The responsible authority maintains and publishes an accessible, accurate register of registrants (including, where permitted, any conditions on their practice).</p> <p>The responsible authority has clear, transparent, and timely mechanisms to consider applications and to:</p>
c	To consider applications for annual practising certificates.	<ul style="list-style-type: none"> • register applicants who meet all statutory requirements for registration • issue practising certificates to APC applicants in a timely manner • manage any requests for reviews of decisions made under delegation.
d	To review and promote the competence of health practitioners.	<p>The responsible authority has proportionate, appropriate, transparent, and standards-based mechanisms to:</p>
e	To recognise, accredit, and set programmes to ensure the ongoing competence of health practitioners.	<ul style="list-style-type: none"> • assure itself that applicants seeking registration or the issuing of a practising certificate meet, and are actively maintaining, the required standard • review a health practitioner’s competence and practice against the required standard of competence
k	To promote education and training in the profession.	

Functions under section 118 of the HPCA Act		Related standards
		<ul style="list-style-type: none"> improve and remediate the competence of practitioners found to be below the required standard.
f	To receive information from any person about the practice, conduct, or competence of health practitioners and, if it is appropriate to do so, act on that information.	<p>The responsible authority has appropriate, timely, transparent, fair, and proportionate mechanisms for:</p> <ul style="list-style-type: none"> providing clear, easily accessible public information about how to raise concerns or make a notification about a health practitioner
g	To notify employers, the Accident Compensation Corporation, the Director-General of Health, and the Health and Disability Commissioner that the practice of a health practitioner may pose a risk of harm to the public.	<ul style="list-style-type: none"> identifying and responding in a timely way to any complaint or notification about a health practitioner considering information related to a health practitioner’s conduct or the safety of the practitioner’s practice ensuring all parties to a complaint are supported to fully inform the Authority’s consideration process and are able to participate effectively in that process enabling action, such as informing appropriate parties (including those specified in section 118 (g)) that a practitioner may pose a risk of harm to the public.
h	To consider the cases of health practitioners who may be unable to perform the functions required for the practice of the profession.	<p>The responsible authority has clear and transparent mechanisms to:</p> <ul style="list-style-type: none"> receive, review, and make decisions regarding notifications about health practitioners who may be unable to perform the functions required for the practice of the profession take appropriate, timely, and proportionate action to minimise risk.
i	To set standards of clinical competence, cultural competence (including competencies that will enable effective and respectful interaction with Māori), and ethical conduct to be observed by health practitioners of the profession.	<p>The responsible authority sets standards of clinical and cultural competence and ethical conduct that are:</p> <ul style="list-style-type: none"> informed by relevant evidence clearly articulated and readily accessible developed in consultation with the profession and other stakeholders inclusive of one or more competencies that enable practitioners to interact effectively and respectfully with Māori.

Functions under section 118 of the HPCA Act		Related standards
j	To liaise with other authorities appointed under this Act about matters of common interest.	The responsible authority understands the environment in which it works and has effective and collaborative relationships with other authorities.
ja	To promote and facilitate inter-disciplinary collaboration and cooperation in the delivery of health services.	The responsible authority uses mechanisms within the Act such as competence standards, accreditation standards, and communications to promote and facilitate inter-disciplinary collaboration and cooperation in the delivery of health services.
l	To promote public awareness of the responsibilities of the authority.	The responsible authority: <ul style="list-style-type: none"> • demonstrates its understanding that the principal purpose of the 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 • provides clear, accurate, and publicly accessible information about its purpose, functions, and core regulatory processes.
m	To exercise and perform any other functions, powers, and duties that are conferred or imposed on it by or under this Act or any other enactment.	The responsible authority: <ul style="list-style-type: none"> • ensures that the principles (as expressed under the New Zealand Public Health and Disability Act 2000) of the Treaty of Waitangi are followed in the implementation of all its functions • ensures that the principles of Right Touch regulation⁵ are followed in the implementation of all its functions • identifies and addresses emerging areas of risk and prioritises any areas of public safety concern • consults and works with all relevant stakeholders across all its functions to identify and manage risk to the public in respect of its practitioners • consistently fulfils all other duties that are imposed on it under the HPCA Act or any other enactment.

⁵ For details about Right Touch regulation see: <https://www.professionalstandards.org.uk/what-we-do/improving-regulation/right-touch-regulation>