

General terms of reference for performance reviews of responsible authorities

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Preamble

These general terms of reference set the high-level requirements for performance reviews conducted in accordance with section 122A of the Health Practitioners Competence Assurance Act 2003 (HPCA Act). The Ministry of Health will set more detailed requirements for each review in consultation with the responsible authority¹ being reviewed.

¹ For a current list of responsible authorities, see: <https://www.health.govt.nz/our-work/regulation-health-and-disability-system/health-practitioners-competence-assurance-act/responsible-authorities-under-act>

Performance reviews

Purpose of performance reviews

Performance reviews provide assurance to the Crown and the public that responsible authorities are performing their functions efficiently and effectively. This includes the assurance that:

- the responsible authorities are carrying out their required functions in the interests of public safety
- their activities focus on protecting the public without being compromised by professional self-interest
- their overall performance supports 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 with better visibility of how efficiently and effectively responsible authorities are performing their functions under the HPCA 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 following five principles of te Tiriti o Waitangi / the Treaty of Waitangi:² tino rangatiratanga, equity, active protection, options, and partnership
- consider how well the responsible authorities' approach reflects the six principles of Right-touch regulation: proportionate, consistent, targeted, transparent, accountable, and agile³
- focus on responsible authorities' ability to be forward-looking, proactive, and responsive
- be useful to responsible authorities and should facilitate their continued competence and improvement

² As articulated in: Ministry of Health. 2020. *Whakamaua: Māori Health Action Plan 2020–2025*. Wellington: Ministry of Health.

³ For details about Right-touch regulation, see: <https://www.professionalstandards.org.uk/what-we-do/improving-regulation/right-touch-regulation>

- 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 (see section 118 of the HPCA Act)
- based on outcomes and/or outputs, 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 section 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 (see Appendix 1). While formal and evaluative, performance reviews will be carried out in a collegial manner and the reviewer may 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 circumscribed, tailored reviews may also be conducted where an earlier review has noted one or more significant concerns and has recommended additional 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 (including consultation with key stakeholders).

Roles and responsibilities

Ministry of Health

The Ministry of Health (the Ministry) is responsible for ensuring that performance reviews are carried out in accordance with the HPCA Act. This includes establishing an initial schedule for reviews and, in consultation with the relevant responsible authority, appointing reviewers and setting the terms of reference for each review. The Ministry monitors responsible authorities' compliance with their obligations under the HPCA Act, including sections 122B and 134.

Reviewer(s)

Performance reviews will be conducted under the Ministry's HSII-QAS-HealthCERT framework. Reviewers will be appointed based on their 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 report before 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 the reviewer is on site.

Schedule for first round of performance reviews

The Ministry, in consultation with the responsible authorities, will decide on the proposed schedule for the first round of reviews. It may later alter that schedule where necessary (for example, to accommodate a reviewer's availability or unforeseen disruptions) and following further consultation with the affected responsible authorities. It will give a minimum of 12 months' prior notice of a review whenever practicable.

Reporting

The reviewer will, as soon as practicable after conducting a performance review, write a report on their conclusions, including any recommendations. They will provide a draft report to the responsible authority for comment on any factual errors, before they complete the final report. The reviewer will then submit the completed report to the

Minister (via the Ministry's Health Workforce Directorate) and the responsible authority. The report will clearly state whether each standard has been met, partially met, or not met.

The report should also highlight any areas of learning that may benefit all responsible authorities. It may make recommendations to other agencies.

Costs

The responsible authority being reviewed shall meet the costs of the review.

Appendix 1: Core performance 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 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 • promote the 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.	<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 • 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.
(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.	<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

Functions under section 118 of the HPCA Act		Related standards
		<ul style="list-style-type: none"> inclusive of one or more competencies that enable practitioners to interact effectively and respectfully with Māori.
(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 HPCA 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.	<p>The responsible authority:</p> <ul style="list-style-type: none"> demonstrates its understanding that the principal 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 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.	<p>The responsible authority:</p> <ul style="list-style-type: none"> ensures that the principles of equity⁴ and of te Tiriti o Waitangi / the Treaty of Waitangi (as articulated in <i>Whakamaua: Māori Health Action Plan 2020–2025</i>) 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

⁴ The Ministry's definition of equity is: 'In Aotearoa New Zealand, people have differences in health that are not only avoidable but unfair and unjust. Equity recognises different people with different levels of advantage require different approaches and resources to get equitable health outcomes.'

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

Functions under section 118 of the HPCA Act	Related standards
	<ul style="list-style-type: none"> • consults and works effectively 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.