

Summary of submissions regarding core performance standards for responsible authorities

Citation: Ministry of Health. 2020. *Summary of 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 978-1-99-002934-9 (online)
HP 7455



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

Background and number of submissions	2
Submission summary	3
Guiding principles	3
Nature of reviews	4
Scope of reviews and methodology	4
Roles and responsibilities	5
Schedule for first round of reviews	6
Reporting	7
The standards	13

Background and number of submissions

When the Health Practitioners Competence Assurance Act 2003 (HPCA Act or the Act) was amended in 2019, one of the amendments introduced regular, independent performance reviews for responsible authorities (RAs) (see section 122A of the HPCA Act). This change is in line with international trends in health occupational regulation, which include strengthening consumer protection, standardising legislation and institutional design, and improving the overall performance of regulators.

The Ministry of Health recently asked for feedback on draft (general) terms of reference (ToR) and core standards for performance reviews of responsible authorities. This paper outlines our analysis of the 69 submissions we received¹.

There were 31 individual and 38 organisational submissions. Table 1 summarises the types of stakeholders making submissions and the number of submissions in each group. Approximately 90% of submissions were from New Zealand-based stakeholders. (See the appendix for the full list of submitters.)

Table 1: Submissions by stakeholder type

Stakeholder type	Number of submissions	
District health board	2	(3%)
Government agency	5	(7%)
Member of the public	1	(1%)
Other	6	(9%)
Professional association	16	(23%)
Professional college	6	(9%)
Regulated health practitioner	27	(39%)
Responsible authorities*	5*	(7%)*
Training provider	1	(1%)
Total	69	(100%)

* Three joint submissions represented a total of 13 responsible authorities. In total, 14 of the 16 responsible authorities made submissions individually and/or collectively.

¹ One submission (from the Australian Health Practitioner Regulation Agency) was misdirected to another organisation and therefore received well after the submission deadline. It has been included in the total number of submissions received and was read and considered as part of our ultimate analysis, but it was not excerpted for this summary.

Submission summary

The consultation included 17 discussion questions. Submissions could be made in writing by completing a hard copy form or an online form. A question-by-question summary follows.

1. Please comment on the following sections of the proposed Terms of Reference

Forty-nine submitters (72%) commented on this question.

Guiding principles

A clear majority expressed support for the guiding principles. A number of responses specifically supported the inclusion of Right-touch principles, and some argued for stronger articulation of what they consider to be the RAs' Tiriti obligations.

'... the guiding principles do not articulate strongly enough the obligations of the crown to uphold ... Te Tiriti o Waitangi as the guiding foundation of how we interact in partnership with key stakeholders.'

A wish to see Tiriti obligations reflected in the standards was one of the major themes of the feedback received on all aspects of the ToR and standards.

'This foundation document and agreement between Māori and the crown established a partnership at the forefront of all decision making. As mentioned in Appendix 1 Pg 14, m: "Ensure principles of the treaty are followed ..." This needs to be intrinsic in its functions and capacity. It is not enough for the proposed standards to include the treaty as a broader focus, this should be intentionally inserted and asserted at all levels, including these proposed standards, it's guiding principles and those in RA governance roles, with the overarching theme of establishing and maintain authentic partnerships with Māori at all levels. Moving from labelling Māori as a "stakeholder" to a "partner" is the first step to be made.'

In contrast, one submission stated that the emphasis on protecting the health and safety of Māori cannot be a guiding principle as it is not specifically referenced in the HPCA Act, and that the principles of Right-touch regulation are not requirements in New Zealand. Another submission proposed that, as the Right-touch principles were 'a UK process', we should instead develop an 'NZ framework ... in partnership with Māori'.

Another recurring theme was a call for greater involvement of practitioners in regulatory and review processes.

'Better outcomes are achieved for the public when the regulated profession is included in the development of the regulations thereby having full understanding and acceptance of them.'

'... there is little weighting of the views of the regulated on how well the regulator is performing, other than being cognisant of stakeholders interests.'

Finally, submissions expressed contrasting opinions on the breadth and depth of reviews.

'We agree that the principles of modern regulatory strategy and practice including risk based, responsive and right touch regulation must be fully integrated into the standards. However, reviews should also consider whether RAs have adopted regulatory strategies that are effective and suit the context that they operate within. If not, there is a risk that the review will focus overwhelmingly on whether the RA has met each individual standard at the expense of the higher-level review.'

'The "Performance reviews" section includes a list of principles. This has the potential to make the review task onerous and costly if reviewers are expected to consider "prescribed performance standards" through multiple lenses. This list should be prioritised to 3-5 key principles that align with the review's purpose; focusing on the few things that really impact on the performance of an RA will streamline the process.'

Nature of reviews

Submissions also supported the description of the nature of reviews. Concerns focused on the use of self-assessment and the eventual tailoring of terms of reference for each review.

'[We] encourage the Ministry to consider having consistent terms of reference, review processes, and reporting requirements across the responsible authorities. When one of the aims of performance reviews is to build competence and foster continued performance improvement of responsible authorities, being able to learn from each others' performance reviews will be essential ... Consistency of process will also be important for ensuring responsible authorities are approached in a fair and consistent manner.'

Others, however, welcomed the intent to tailor reviews.

'We welcome the flexibility to allow tailored reviews outside of the five-year cycle.'

Scope of reviews and methodology

Feedback was more mixed on the scope and methodology section of the ToR.

'As a responsible regulatory authority independent from the Crown, the Council welcomes the scope of the CPSRA [ToR and standards] and its focus on transparency, accountability and public safety.'

'We strongly support a standards-based scope and methodology, focused on section 118 outcomes/outputs. Using a standards-based approach for reviews

with constructive feedback is good regulatory practice. There is a high level of concern about the required evidence and how the performance reviews are expected to be carried out.'

As mentioned above, a recurring theme was a call for greater involvement of practitioners in review processes.

'[We] suggest including a requirement in the performance review process to seek feedback from the respective profession or industry peak body on the performance of the RA in question.'

Roles and responsibilities

Feedback was mixed and leaning more toward unfavourable on the proposals about roles and responsibilities. Some called for practitioners, policy analysts, and academics to be part of the review team and for any conflicts of interest to be identified.

'There would be the expectation that relevant registered health practitioners with significant knowledge and experience with dealing with regulatory issues and themselves having a clear understanding of the practical provision of all the RA roles would be an integral part of any assessment team.'

'It is not clear from the roles and responsibilities information ... if there would be one reviewer or a review team. The College would encourage the Ministry to use a collaborative approach for conducting the reviews and/or evaluating the evidence to help ensure there is a greater level of impartiality. Having more than one reviewer involved in the process may also provide opportunities to build a greater "pool" of reviewers with varying levels of knowledge and experience.'

In contrast, another submitter noted that the HPCA Act (section 122A) specifies that 'an independent person' will be appointed to conduct the review.

Views were markedly divergent on who should, or should not, be appointed as reviewers.

'The Ministry proposes that performance reviews would be conducted under the Ministry of Health's HSII-QAS-HealthCERT framework. Although the HealthCERT framework may be relevant for the certification and audit of hospitals, rest homes, residential disability care facilities and fertility providers, the Physiotherapy Board considers it is not adapted to a review of the health profession regulatory environment implemented by the Act.'

'We are aware of and have worked with certified reviewers under the Ministry of Health's HSII-QAS-HealthCERT framework and are satisfied that the Ministry will be able to rely on their experience and expertise to deliver on the brief provided to them.'

'[We] recommend the Ministry of Health include two (2) reviewers, one Māori and one non-Māori, to complete the performance reviews of responsible authorities. This is to help ensure the safety of Māori as well as encouraging the responsible authorities to work in an equitable way.'

‘The reviews should be conducted by more than one person and one should be Māori and one represent the public (health consumer) and one a person trained in audits ...’

‘We recognise the need for cost-effectiveness, but caution that this should not be a driving factor in appointing reviewers. We strongly encourage the focus to be on knowledge, expertise and experience, which we note are included ... To promote public confidence, reviewers will need to be demonstrably independent from and objective about the authority under review.’

‘For the principles of Te Tiriti o Waitangi (partnership, participation and protection) to be upheld, there will need to be Māori input to the nomination and selection of all reviewers who conduct the independent performance reviews of the responsible authorities. Indeed, there is a potential conflict of interest in the event the Crown nominates its reviewer for responsible authorities’ performance in relation to Te Tiriti o Waitangi. Particularly in relation to performance on Te Tiriti, the reviewer should be nominated by Māori, not by the Crown.’

Another concern was that the role of the Ministry was not adequately defined.

‘We would expect to see the roles and responsibility of the Ministry covered here. For example, recruiting and selecting reviewers, any administrative support, negotiating scope of review. Clarification on the role of the Ministry is important for a number of reasons, including the risk that through taking on responsibility for the performance review directly, the Ministry takes (or is perceived to take) ultimate responsibility for the performance of the responsible authorities.’

Schedule for first round of reviews

Although feedback was mixed, it generally supported the proposal on scheduling of initial reviews. Some arguments were for shortening the notification period, while others favoured lengthening it.

‘12 months seems an inordinate lengthy time. If the regulatory authority is performing as required, then 3-6 months prior notice of a review should be satisfactory.’

‘A review should be able to take place without notice. The boards should be working to these standards currently and a review with minimal notice or a spot check would ensure that boards are assessed on what they are doing now not how they plan to work as a result of being reviewed.’

‘The principle of providing at least 12 months’ notice to a responsible authority of a review appears generous and one weighted towards the convenience of responsible authorities rather than public protection. We appreciate that the completion of a self-assessment will take time, but consider that a responsible authority should be in a position to be reviewed at all times. A 12 month or longer lead-in time may risk the perception that it is allowing a responsible authority to get its house in order before being subjected to assessment.’

'We note the suggestion that an amendment be made to the HPCAA in a Statutes Amendment Bill to push the review deadline back two years. This proposed solution, alone, does not provide the certainty required for RAs, who will be required to provide dedicated staff resource and budgeted finance for the reviews. The regulatory impact statement considered by Cabinet recognised this crucial timing point; indicating that terms of reference should be set at least three years before the review takes place. At the very least, the Councils consider that scheduling need not be delayed by the current consultation and urges the Ministry to commence that consultation about scheduling as a matter of urgency.'

'To assist budget planning, the RAs believe a minimum of 12 months prior notice to an RA is reasonable, though a longer notice period would be helpful, where possible, to ease any cost implications.'

'One of the key points in the summary of the impact statement notes that the terms of reference for each review will be set at least three years before the review takes place. We would caution that, unless the terms of reference are very broad, these may significantly hinder the Ministry's ability to undertake a review that focuses on the main areas of current or emerging risk.'

Reporting

The feedback on the reporting section was mostly supportive, particularly favouring making the report public and providing it to practitioners. A number of submitters made small, operational suggestions.

'Access to the report by health practitioners is important as these stakeholders have a vested interest in the performance of our regulatory body that we fund and accept regulations from.'

'The report should be released to the public and all stakeholders at the same time as it is submitted to the Minister and the responsible authority.'

'We agree, for reasons of public (and the practitioner) confidence in the authority, upon completion of any review, the entire report should be available to the public.'

'In our experience, the publishing of reports is crucial for transparency, and so we are pleased to see the requirement for responsible authorities to publish the report on their website and to formally respond with their action plans in their annual reports.'

Some submitters believe that an RA should be able to comment on more than just factual errors in the draft report, or that RAs should have a mechanism to dispute the report if they choose.

'It is important that any document required to be published does not diminish the public confidence in the respective RA. It would be appropriate for the RA to have a right of response before a report is published.'

'Although the mechanisms above support a fair process, the [Council] notes, however, that no review or appeal processes are outlined should the responsible authority dispute the final report.'

2. What negative impacts (if any) do you foresee arising from the proposed approach to performance reviews?

Forty-one submitters (60%) commented on this question, with about 80% of those noting possible negative impacts.

Concerns about financial and resource costs dominated the feedback.

'The [Council] notes that the cost of reviews will be met by responsible authorities. Although the consultation document includes the principle of being cost-effective and affordable for every responsible authority, in reality performance reviews are likely to be costly. As well as the direct cost of the review, there will also be indirect use of staff time and resources in preparing for and responding to any review. Meeting these costs may include increasing the practicing certificate fees of health practitioners, a cost that tends to be met by employers. As such, the cost of performance reviews will essentially be passed on to the already underfunded health budget. This means it is even more important that reviews are managed carefully to be as cost-effective as possible, while maximising positive outcomes for the health and safety of the public.'

'At the very least there needs to be an indication of the average cost of a review. As each authority is subject to being reviewed against the same set of standards, this should allow the Ministry to set each review at a standard capped cost. Authorities need to have more transparency as to the expected cost of a review so they can include that into their budgets with sufficient advance notice.'

'Only concern is that the smaller RAs may have difficulties performing the reviews. Costs are meant to be within the ability of each RA to afford but this is likely still to require increased registration costs for each professional member, disproportionately for the smaller membership RAs (compare podiatry with nursing).'

'There is always a risk of unintended consequences from regulatory action, and we would encourage this to be considered in detail, in line with the eight elements we outline in Right-touch regulation. By focusing, through performance review, on particular areas of a responsible authority's performance, there is a risk that the responsible authority puts resources into that area at the expense of others. There is also a risk that the focus of reviews drives the work of the responsible authorities, which may not necessarily be the intention. An overly-burdensome approach to performance review can also take resources from the responsible authorities' work to protect the public, the impact of which may be especially keenly felt in smaller organisations.'

'Finally, there is concern at the additional cost that will be incurred as a result of this additional requirement for independent performance reviews of responsible authorities. There is a view that these costs should, at the very least, be shared

between the Ministry of Health and the responsible authority, if not borne fully by the government.'

3. Will review against the proposed standards provide confidence that a responsible authority is carrying out its functions in the interest of public safety?

Thirty-six submitters (53%) commented on this question.

Half of the respondents stated that the reviews will provide confidence, while a further 43% expressed some agreement. Submitters noted that transparency and public awareness will be necessary preconditions to growing confidence, and that the RAs will also need to follow up on any recommendations in a meaningful way.

'Yes. Only if the public are made aware that RAs are reviewed and audited. As much of the public are not aware of what RAs do in general, I am not sure how much a review will do to improve public confidence. Transparency is extremely important and improvements in RA actions are necessary. Auditing needs to be standardised and the public needs to be assured that review results in real improvements, not just another tick box appeasement.'

'This depends on whether the responsible authority will act on the findings in the review.'

'[We] believe that a review will provide confidence that a responsible authority is carrying out its functions in the interest of public safety, so long as the review is addressing both clinical and cultural safety.'

'The review against the proposed standards will provide limited confidence in terms of public health and safety. The level of confidence will depend on the level of acceptance of the standards and this consultation process may provide greater assurance to stakeholders. Ultimately confidence will depend very much on how the reviews themselves are undertaken.'

'We consider the scope and coverage of the proposed standards [are] appropriate to provide confidence that a responsible authority is carrying out its functions in the interests of public safety.'

4. Do the proposed standards adequately and appropriately reflect good regulatory practice (including the principles of Right Touch regulation)?

Thirty-three submitters (49%) commented on this question.

Most responses indicated agreement that the standards reflect good regulatory practice. A small proportion (12%) clearly indicated that they do not.

'[We] consider that the proposed standards are generally appropriate. In most cases, they are well aligned to the functions of authorities specified by the Act and would provide a rigorous benchmark for determining how effectively and efficiently an authority under review is performing its functions.'

‘Some of the standards appear to be process, rather than outcomes, focused. For example, a number of the standards require the responsible authorities to have mechanisms in place for particular areas. With this wording, it might be possible for a responsible authority to meet a standard if they had such a mechanism in place even if the outcome of the mechanism is suboptimal ... Without detail of the underlying processes, it is difficult to determine whether the overall programme of performance review will be consistent with Right touch regulation. While the standards are an important part of working to Right-touch principles, whether the performance review programme conforms to these principles will... depend on the approach taken and implementation. We think that more outcomes-focused standards would help the Ministry to judge whether the responsible authorities are working to good regulatory practice and Right-touch regulation, and make it easier for the performance review programme to do so.’

‘In terms of a review of the adequacy of the ‘Performance of Authorities’ the proposed standards do not adequately reflect good regulatory practice as they do not specifically review the individual performance of those appointed to the authority, its cost effectiveness or the appointment process. As described, we believe the terms of reference and methodology and scope are too narrow.’

‘No. The standards have been drafted at a functional level and do not reflect the principles of right-touch regulation (proportionate, consistent, targeted, transparent, accountable and agile). Nor do they reflect best practice health practitioner regulation around some of those other principles about proactive, forward looking regulation and the importance of engagement and partnership. These principles must be built into the standards.’

Some submitters indicated that the standards lack key components and so do not adequately reflect good regulatory practice.

‘The partnership between the crown and Iwi provides a framework for Māori Health development health and wellbeing. This needs to be woven into all of the standards to ensure they are visible and RAs are held accountable for inclusion in all aspects of their relationships to ensure our workforce are culturally competent, provide safe cultural care to the population.’

5. What gaps (if any) are there in the proposed standards?

Forty-four submitters (65%) commented on this question.

Many of the themes mentioned above appear again here. Concerns about te Tiriti requirements, cultural safety, equity, cost, and hearing the voices of practitioners all feature.

‘We wish to reiterate the importance of:

- a regulator being connected to the profession to ensure that the standards it sets are relevant, responsive and right touch to protect the public.
- strong and enduring relationships with key stakeholders

- an expressed commitment by the regulator to improve health equity for Māori and policy's that demonstrate a strong commitment to te Tiriti and enduring relationships with Māori and iwi, and communities of interest
- open and transparent communication with the sector including when terms of reference for reviews are established.

The above are not strongly reflected in the draft terms of reference for performance review. The performance review focuses on the functions of the regulator under the Act however does not necessarily review the strategic capability of the governance board and the overall operational effectiveness of the regulator. There is no mention of the regulators engagement with strategic work that determines the relevance and contemporary forward focused review of the standards it sets.'

'Cultural safety is a key component of safe high-quality care as are equitable outcomes for all population groups. As such we feel there is a need to strengthen this in the guiding principles of the TOR. There is no mention of how the approach will address the assessment of the authority's Te Tiriti o Waitangi enactment both internally and of its members and if they provide culturally safe care. This should be part of the high-level requirements for all regulatory authorities.'

'With regards to the performance standard f) I think it could be useful to include a related standard that encapsulates that the responsible authority needs to demonstrate good administrative decision-making practices with regards to their decision-making on complaints.'

'There is nothing relating to an authority having appropriate and sustainable organisational infrastructures to support the execution of their responsibilities. While there is nothing specific in the Act directly related to this, the robustness of core functions such as IT, HR, financial management is critical to the ongoing work and sustainability of an authority. Demonstration of fiscal prudence is a core requirement for authorities.'

'Health equity is not mentioned at all which is worrying and this point should also be inserted and asserted at all levels.'

'We do not know how effective governance and leadership are in the responsible authorities, but numerous inquiries and reports have shown us that weaknesses in these areas can result in poorly functioning organisations that lead to deficient public protection.'

Some submissions included basic recommendations, while others highlighted higher-level, strategic considerations.

'The RAs believe more focus should be placed on how the Standards might be more about protecting public safety, ensuring highest standards of professional competence, future trends and demands on health workforce and how RAs are positioning themselves to respond to these changes.'

6. Most of the proposed standards are closely tied to a responsible authority's functions (as prescribed under s 118 of the HPCA Act). Others, for example those relating to the principles of the Treaty of Waitangi and of Right Touch regulation, take a broader view. Is it appropriate for the standards to include this broader focus?

Thirty-seven submitters (54%) commented on this question.

Over 85% of the submissions on this topic supported the standards, including the proposed broader focus.

'I believe so. the ToW [Treaty of Waitangi] is more than appropriate to be included and the Right Touch regulation would be great to consider in promoting for the Boards approach. I value the broader approach.'

'Certainly need to broaden to include principles of the Treaty of Waitangi which includes at RAs governance and board levels and in the operations of any of the RAs.'

'[We] agree with the proposed general Terms of Reference and [are] supportive of the proposed standards taking a wider view than the HCPA Act to include the Treaty of Waitangi.'

'We would agree that it is appropriate, and indeed important, to include this broader focus. A broader focus can allow routes in to identify and act on issues that might not otherwise be identified.'

'Yes, the principles of right touch regulation must be picked up as part of the review ... In addition, since the introduction of the Act there are several themes that have emerged more strongly for regulation - patient-centred care, harm reduction (Malcolm Sparrow, Harvard University) and equity are examples. There is an opportunity to consider whether the review should consider these aspects of regulation.'

'[We] have a concern that the terms of reference may focus too narrowly on the wording in the HPCA Act, rather than including the wider processes that enable regulatory authorities to meet those functions.'

'We support the inclusion of performance standards with a broader focus, for example those relating to the principles of the Treaty of Waitangi and of Right Touch regulation as these are appropriate and an important part of Aotearoa New Zealand healthcare.'

Two submissions stated that the broader focus was not appropriate.

'Nevertheless the Board is concerned that certain standards proposed in relation to s.118(m) are inappropriate. Those standards were proposed late in the consultation process and were not subjected to the same degree of detailed consideration or discussion as the other proposed standards.'

A number of submissions encouraged further work on the cultural and te Tiriti aspects of the ToR and standards.

'Being cognisant of Maori as a key guiding principle (assuming this is done and done appropriately with adequate liaison with Maori) I feel covers this broader focus.'

'The standards need to address the issue "What would Treaty Compliant" Regulation look like.'

- 'Cultural safety is a key component of safe high-quality care as are equitable outcomes for all population groups. As such we feel there is a need to strengthen this in the guiding principles of the TOR. There is no mention of how the approach will address the assessment of the authority's Te Tiriti o Waitangi enactment both internally and of its members and if they provide culturally safe care. This should be part of the high-level requirements for all regulatory authorities. If one of the principles is to help the public better understand both the HPCAA and their role one of the performance standards need to also look at:
- how each RA is engaging with consumers and with Māori as part of their Te Tiriti o Waitangi enactment.
- how they are, explaining their roles and making transparent their reports in plain English, Te Reo and other formats.'

The standards

Comments on the individual standards were generally supportive, with many submissions including specific suggestions for improvement. The summaries below highlight recurring themes and notable exceptions.

7. Standard relating to section 118(a) of the HPCA Act

Twenty-seven submitters (39%) commented on this question.

Suggestions for improvement included consultation and cultural considerations.

'There needs to be clear criteria to avoid bias in the people selected for expert advisory groups. There also needs to be extended stakeholder input. From past experience there is not a definite link between (a) and (j/ja) in that it should be very clear that the requirements of (a) must involve transparent stakeholder input, consultation and feedback. This should also require clear availability of the evidence and information on which decisions were based. This is important because the responsible authority do not fall under the Official Information Act. Particularly section (a) is dependent on the calibre of the appointed council which requires more transparency and independent review.'

'[A]gree but needs a reference to cultural competency and working in partnership with Te Tiriti o Waitangi principles of Kawanatanga, Tino Rangatiratanga, Oritetanga, Te Ritenga.'

'The main focus of our feedback relates to ensuring independent performance reviews of responsible authorities address the issue of extension or redefinition

of scopes of practice (and related issues such as the qualifications required). Currently, responsible authorities determine their own scopes of practice and do not have any legislative requirement to consult when extending or redefining these. We believe this represents a serious risk to public safety and could also allow professional self-interest to compromise a focus on protecting the public ... We submit that the independent performance review should consider whether a responsible authority has consulted with other groups beyond its own profession when it seeks to extend or redefine scopes of practice, and to determine the qualifications that are required for this purpose.'

8. Standard relating to section 118(b) and (c) of the HPCA Act

Twenty-one submitters (31%) commented on this question.

Suggestions for improvement included clarifying terms used and broadening the standard's coverage.

'Once again, [we] would request further clarification regarding the definition of "timely accreditation and monitoring mechanisms" and [request] an alteration of this to ensure it is timebound. This is to ensure that there are minimal discrepancies across regulatory authorities.'

'Recertification programmes as well as conditions on scopes need to be added to the Standard. The mechanism used by the RAs for "policing" or monitoring conditions on scope needs to be identified. This has a strong public protection element. Additionally, some RAs use voluntary agreements/undertakings, which although not based in a legal framework are used as a mechanism for public protection. It would be helpful to understand what standards are applied to these. There are other timeframes applicable to practising certificates apart from annual practising certificates. The recertification process is important in addressing and catching issues of competence, conduct and health. There needs to be a standard on how the RAs ensure that practitioners applying for a practising certificate are fit and competent to practise. There is more to this function than just the issuing of practising certificates.'

9. Standard relating to section 118(d), (e) and (k) of the HPCA Act

Twenty-two submitters (32%) commented on this question.

Feedback was mixed, but generally supported this proposed standard. Suggestions for improvement were wide ranging.

'Cultural safety is a key component of safe high-quality care as are equitable outcomes for all population groups. As such this standard should refer to cultural safety as part of competence.'

'We note that the terms "proportionate", "appropriate" and "transparent" are being used in this Standard which is taken from the Professional Standards Authority on good regulation. However, the term "agile" is missing from the Standard and is an important function of RAs. There is no mention of promoting competence in the related Standard. There needs to be information about the

lay representation on competence review committees. There needs to be clear policy and process for competence reviews if transparency and avoidance of “professional capture” is to be demonstrated. Recertification programmes are missing from this related Standard, and more importantly, how failures within the programmes are managed. There is no related Standard on how the RA engages with the profession. For example – communications, newsletters promoting education and training, the use of social media like Facebook and LinkedIn etc., and the relationship with associations and colleges to foster education and training. In addition, there is nothing in the standard about how RAs monitor and support continuing professional development and its link to recertification processes and competence.’

10. Standard relating to section 118(f) and (g) of the HPCA Act

Twenty-four submitters (35%) commented on this question.

Most comments on this standard were quite brief and succinct, and generally supportive. Suggestions for improvement included demonstration of good ‘administrative decision-making practices’, consideration of appropriate support needs for Māori, and acknowledgement of the role of the Health and Disability Commissioner (HDC).

‘It may be intentional on the part of the Ministry, but we believe there could be greater specificity provided in this standard to outline what is expected of a fitness to practise process. There is no inclusion, for example, of taking action to restrict a registrant’s practice.’

‘The Standards need information on the mechanism used to keep the complainant informed of process and whether the RA has a mechanism in place to inform overseas jurisdictions of concerns if the practitioner leaves New Zealand. This is important given the provisions within the Trans-Tasman Mutual Recognition Act. The need to identify how risk of harm/ serious risk of harm is assessed is missing from the Standard, as well as clarity on the assessment triage processes that delineate risk of harm and serious risk of harm. This is a key regulatory function and crucial for public protection and confidence in the regulator.’

11. Standard relating to section 118(h) of the HPCA Act

Twenty submitters (29%) commented on this question.

Submissions again generally supported this standard and made a number of suggestions for improvement.

‘There needs to be detail that shows processes are in place for independent assessments under section 45 of the HPCA Act. In addition, that the RA has a process to monitor ongoing health issues. The use of voluntary agreements or undertakings comes under this – when are these used and what safety measures are in place if practitioners fail to comply.’

'Ensure that responsible authorities provide a pathway to support reintegration into the profession for a health practitioner who is unable to perform the functions required.'

12. Standard relating to section 118(i) of the HPCA Act

Twenty-four submitters (35%) commented on this question.

Most of the suggestions made in respect of this standard were in relation to cultural competence.

'... please ensure that the cultural competency standard (i) explicitly refers to Pacific people alongside Maori, i.e. the standards of clinical and cultural competence and ethical conduct that are ... inclusive of one or more competencies that enable practitioners to interact effectively and respectfully with Maori and Pacific.'

'I believe these guidelines should be developed in collaboration, not just consultation, with the profession.'

'This standard should refer to cultural safety rather than cultural competence. Cultural safety is a key component of safe high-quality care as are equitable outcomes for all population groups. This standard should also refer to standard setting regarding the enactment of Te Tiriti o Waitangi articles by its members and the provision of culturally safe care.'

13. Standard relating to section 118(j) of the HPCA Act

Twenty-four submitters (35%) commented on this question.

Submissions generally supported this standard. Suggestions for improvement ranged from including other stakeholders in liaison work to creating an overarching authority.

'This would be better to include effective and collaborative relationships with other relevant stakeholders and not just authorities.'

'... I feel strongly that the importance [of] this facet cannot be under-estimated. For the sake of clarity, consistency, understanding among public and health professionals we need consistency of "generic" standards (I would advocate for a cross RA "foundational HPractitioner ethical principles" document - it is absurd that some RAs allow some behaviours and others don't from an ethical perspective - it is this that creates confusion for public, perceptions of self-interest, and creates confusion and barriers between health professionals).'

'I think this should also include understanding the environments that their key stakeholders are working in as the responsible authority may have a very different environment to clinical / academic staff.'

'I do wonder if there should be one overarching responsible authority (as in the UK) to oversee this work. Currently we are duplicating and wasting money supporting multiple Regulatory Authorities. There must be a more cost-effective way to manage this. Yes have specialists within the overarching responsible

authority (subject matter experts - although with an investigation you would often look into the sector for advice anyway). I believe some Regulatory Authority have become an industry unto themselves. I would support simplification of this sector with one responsible authority body governing much of this.'

'Our experience is that it can be difficult for all RAs to liaise and work with each other in a meaningful way. As a consequence, it may be difficult to identify how RAs would provide evidence around this Standard. The Standards call for an understanding of the environment in which they work. It will be interesting to see how this understanding is evidenced in the reviews. We suggest that an additional Standard be added which identifies that authorities demonstrate learning from each other so that best practice is promoted across the authorities.'

14. Standard relating to section 118(ja) of the HPCA Act

Twenty-one submitters (31%) commented on this question.

Submissions generally supported this standard and were quite succinct.

'Great. I do hope this picks up on areas where current boards can work more between other professional bodies.'

'The RAs understand that tethering this function back to the competencies and other Standards is a clear way of demonstrating the requirements of this function, but as referred to previously, it is not clear how the outcomes of this function will be demonstrated.'

15. Standard relating to section 118(l) of the HPCA Act

Seventeen submitters (25%) commented on this question.

Submissions again generally supported this standard. Several included suggestions for improvement, with an emphasis on te Tiriti concerns.

'Many of the documents written by RAs tend to be written for the profession rather than the public. The language used can often be complicated and contain legalese. It would be helpful to see a Standard that requires plain English (and plain Māori) to be used in the RA's documents and website.'

'All RAs should provide information on how they work in concordance with the Treaty of Waitangi at board and operational levels.'

'If one of the principles is to help the public better understand both the HPCAA, [and] the role and function of regulatory authorities, this standard need to also include:

- how each regulatory authority is engaging with Māori as part of their Te Tiriti o Waitangi enactment.
- how each regulatory authority is engaging with consumers.

- how they are explaining their roles and making transparent their reports in plain English, Te Reo, and other formats.’

‘An additional dot point is required: The responsible authority ... ensures the practitioners are fully aware of the responsibilities of the authority and the authorities prescribed requirements they, as practitioners, have to meet.’

15. Standard relating to section 118(m) of the HPCA Act

Twenty submitters (29%) commented on this question.

Submitters expressed general support for this standard, with the following two notable exceptions.

‘[We] consider that the proposed s 118(m) standards would fall outside the lawful scope of a performance review conducted under s 122A of the Act. In particular, most of the proposed standards for s 118(m) don’t relate to any statutory function of authorities. The first two points are problematic. In particular,

- because authorities are not part of the Crown, they are not parties to the Treaty of Waitangi. Nor are they subject to the principles of the Treaty of Waitangi under the New Zealand Public Health and Disability Act 2000 (or otherwise) as they are not providers of health and disability services and they do not deliver or control health outcomes.
- authorities may choose to adopt the principles of Right Touch Regulation promulgated by the PSA [Professional Standards Authority in the UK], but they need not do so. Recent evidence suggests that there is little to recommend UK regulatory approaches as exemplars for NZ. (see the UK report concerning the Paterson inquiry).’

‘We understand this to be a catchall function. The items identified, including Right Touch, health equity and emerging areas of risk are not “other functions, powers, and duties that are conferred or imposed on it by or under this Act or any other enactment”. As there are extensive clauses in section 118 that are identified, there ought to be no unrelated areas included, however admirable they may be. The Ministry will need to provide RAs with clearer guidance around its expectations on this Standard.’

Suggestions for improvement again largely focused on te Tiriti concerns.

‘This standard needs to be strengthened in point 1 to demonstrate how the authority enacts and embeds the articles of Te Tiriti o Waitangi.’

‘Whilst it is important that Te Tiriti o Waitangi has been included, [we are] disappointed that this is the first mention throughout the entire performance standards relating to Te Tiriti o Waitangi. We recommend that the Ministry review the standards and place Te Tiriti o Waitangi at the centre of them to prevent tokenism and cultural appropriation by regulatory bodies.’

'As mentioned previously the UK Right Touch framework is drawn from overseas- whilst it may help there is an opportunity to design a NZ framework underpinned by the Treaty of Waitangi'

16. Any other comments (including comments in email submissions that didn't clearly align with the questions above)

Forty-eight submitters (71%) provided further comments.

This final, catch-all question attracted a wide range of comments. Parts of some emailed submissions are also included below where the subject they dealt with could not easily be connected to one of the previous questions. Many submitters used this opportunity to note their support for the establishment of performance reviews. The following samples of their comments emphasise recurring themes or raise issues not previously noted.

'We support the overarching intent of strengthening consumer protection, institutional design and improving overall performance of regulators through the use of agreed review standards and guiding principles. These are important features for improving and maintaining a culturally responsive health system, which is necessary to support the goal of resilient and healthy Pacific communities.'

'The [(English) Law Commission, Scottish Law Commission, and Northern Ireland Law Commission] propose that the duty to protect the public should provide that the regulators must ensure proper standards for safe and effective practice. They note that the reference to ensuring proper standards does not refer to the specific statutory tasks of issuing codes of conduct or standards of proficiency. It is a far broader concept that encompasses the need to raise the standards of the profession overall and reduce the instances in which regulator intervention is needed to protect the public from registrants whose fitness to practise is impaired. They state the focus remains on public protection but there is an additional acknowledgement that this is achieved through the broad range of activities undertaken by the regulators, not just fitness to practise proceedings. Thus, in their considered view, all the statutory functions of the regulators – registration, setting standards for education, conduct and practice, and taking action where the standards are not met – would flow from this duty.'

'[We are] writing in strong support of the process for performance reviews of the responsible authorities (RA). The reinforcing of functions of the RA is timely and in the experience of the [society] necessary, and overdue. As is stated in the background information. there has been a general loosening of the documented roles of the RA. Having a performance review every five years is at odds with most of the members of the RA who are appointed for 3-year terms. It would be an expectation that some form of written review should be submitted on an at least 2-year basis to ensure that there is no loss of focus in the intervening period.'

''Written in plain English'' – A barrier at the onset. Considerations need to be made in changing this to be culturally safe and inclusive. To finish, further research needs to be sought to further genuinely develop the core performance

standards for responsible authorities' that assures an equitable and genuine approach and establishes a clear partnership between the stakeholder and Māori at all levels.'

'We support the need for a review process of regulatory authorities and seek active engagement to assist in the improvement of the transparency, consistency, communication, timeliness and impartiality of outcomes of the responsible authority regulating dentistry.'

'Self-reflection needs to be embedded within the standards to provide a meaningful standard and explanation to the public.'

'[We] understand the decision to require RA's to fund Reviews. However, the disparity in Annual Practising Certificate (APC) costs between RA's and the fact that many professions in the public health sector have some or all their costs covered by the taxpayer, creates a further disadvantage for those professions that do not access public health funding. The chiropractic profession currently wholly funds the Chiropractic Board. The majority of other RA's who have practitioners working either wholly or partly in the public health sector, are wholly or partly funded by the taxpayer. This creates an inequity which the Ministry should consider in its deliberations as to where costs for the Performance Review lie.'

'Measures designed to improve quality standards and safety for consumers, as outlined in the draft Terms of Reference and Core Performance Standards of Responsible Authorities, are supported by ACC [Accident Compensation Corporation]. The feedback below reflects the combined comments from ACC's Clinical Health Sector Relationship Managers, Policy Team and the Provider Performance Monitoring Team.'

1. Review and implementation of remedial action needs to ensure issues are resolved and authorities held accountable.
2. The outlined process is not clear regarding the process for any RA that does not meet the required standards.
3. The minimum competence standard need to continue to evolve to incentivise improving clinical quality standards. We would encourage a specific focus on cultural safety standards.
4. ACC experience of communication with RAs is variable, this includes levels of engagement, communication. Having more explicit standards around how they are expected to interact with stakeholders would improve confidence and reduce disparities between the RAs.
5. In the case of new RA's being established (e.g., when a new practice becomes regulated) there should be discussion of whether there needs to be further requirements or shorter timeframes between Performance Reviews.
6. It may be useful to include a more comprehensive monitoring and reporting standard regarding data.
7. In the section "transparency and impartiality" it may be worth noting that an important factor is ensuring the governance of RA's is balanced to mitigate

the risks associated with a sector self-regulating, and outlining the process for appointing members to an RA. This includes ensuring that a majority of members are health practitioners, and the number of laypersons required, and sign off by the Health Minister.'

'Responsible authority transparency. Responsible authorities are not subject to the Official Information Act 1982 and as a result are not required to be transparent like Crown entities are. In comparison, HDC is subject to requirements under the Official Information Act 1982 (OIA) and as such must provide information upon request by the people of New Zealand. The OIA, through providing access to official information to the people of New Zealand, enables effective participation in the making and administration of laws and policies and promotes the accountability of the government. As responsible authorities are not subject to the OIA they are inherently less transparent than entities that are subject. Responsible authorities should make their internal policies and procedures publicly available to ensure transparency and consistency in decision making as well as ensuring the principles of natural justice are followed. Responsible authorities should also widely consult with the health practitioners they regulate on any matters that have an effect on their professional practise and responsibilities.'

'Identifying, assessing and mitigating risk is an important function for all RAs. Effectively, RAs are not close to the point of risk in healthcare. The point of risk at an individual level is the practitioner/patient interaction, and RAs cannot be represented at those interactions. Again, section 118 of the HPCAA recognises this by requiring RAs promote and "facilitate inter-disciplinary collaboration and co-operation in the delivery of health services". There are several risk management frameworks in the regulation world including the work of Harry Cayton and Professor Malcolm Sparrow. Whether these models are the basis of a risk framework the Ministry of Health supports is moot; the key point is that the RAs have adopted a risk framework that is recognised and that it uses to effectively meet its operational and strategic functions under the HPCAA. The relationship between the RAs and the Health and Disability Commissioner (HDC) is an important factor in assessing RA performance. Both RAs and the HDC receive complaints from the public, and there is some overlap in jurisdiction. However, delays in HDC investigations, and communication between the HDC and RAs can affect the performance of RAs. This is an important criterion in determining any RA's performance.'

'Published Standards outline a roadmap for quality improvement. Given the cost implications for smaller RA's we would suggest that a tiered approach to the review (smaller RA's being reviewed on less criteria) be adopted. What happens if the RA's don't demonstrate competence against the Standards or Principles? What will this do to confidence in the RA system? It will be very important how the outcomes of the Reviews are managed. We note the release of the Health and Disability System Report and recognise that it identifies opportunities for change in relation to regulatory functions. This is particularly throughout the workforce section generally and specifically on page 194. Given that the RA review will be a precursor to significant changes in the New Zealand Health System such as the introduction of panprofessional structures and merging of authorities, we are hopeful that any RA review will help inform future

opportunities. By focusing reviews in part on efficiencies, findings may help to find synergies between authorities and facilitate proposed mergers.’

‘[We] jointly offer feedback to the terms of reference suggested by the Ministry of Health for performance reviews of Responsible Authorities. We offer several suggestions but most critically:

- The importance of the review to reflect each Council’s obligations to Te Tiriti o Waitangi.
- The importance of reflecting risk-based and other modern regulatory strategies, including the principles of right touch regulation within the standards.
- The need for the review to add value to performance with an attention to costs. It is likely that there will be additional costs to the RA’s borne from direct and indirect review preparation.
- Whilst we understand the possible value of the HealthCERT framework for reporting and coordinating the reviews, we support a quality assurance and improvement lens from a “team” of reviewers that understand the New Zealand health regulation context, as distinct from the delivery of health services.
- We support the proposition that all responsible authorities (RAs) should be subject to ongoing and objective review, to support ongoing quality assurance and improvement, to improve public safety and ensure confidence in the regulatory system.

To support the purpose of the review we propose that a stronger focus should be placed on the international regulatory best practice. Examples include risk-based regulation (Professor Malcolm Sparrow, Professor of the Practice of Public Management, Harvard’s Kennedy School of Government, Faculty Chair of Executive programme Strategic Management of Regulatory and Enforcement Agencies, teacher on ANZSOG [Australia and New Zealand School of Government] programme), and response regulation (John Ayers, Professor at Yale Law School & Yale’s School of Management and John Braithwaite, Emeritus Professor and Founder of the School of Regulation and Global Governance at the Australian National University) as well as the principles of right touch regulation, ensuring that regulation is proportionate, consistent, targeted, transparent, accountable and agile.

These reviews can be expensive, both in direct and indirect cost. We are conscious that the full costs of the reviews will be borne by the profession indirectly and so, it is necessary to ensure value for money and quality assurance and improvement from the review.

While we acknowledge the attraction of being able to tailor a review to the circumstances of a particular RA, the optimal benefit from a review framework will come from applying a consistent lens and set of criteria to all RAs. Establishing and publishing those criteria in advance, and applying them to each review, will not only allow RAs to have those criteria as a focus in their thinking

as they explore policy options and approaches but to learn from the outcomes of the progressive body of reports and to apply them to their own regulatory strategy, policy and activity.

We are pleased to see that the terms of reference provide for reports that include recommendations to other agencies. However, to fully realise the potential for recommendations addressing systemic and regulatory improvement, we believe that this option should transparently and explicitly form part of the assessors' brief.'