

# Departmental Disclosure Statement

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Health Practitioners Competence Assurance Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

9 February 2018

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## Part One: General Policy Statement

The principal purpose of the Health Practitioners Competence Assurance Act 2003 (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”.

Section 171 of the Act requires the Director-General of Health to review the operation of the Act after its first 3 years. The review, completed in 2009, found that the Act was generally operating as intended but recommended a number of legislative amendments (along with a number of operational changes) to clarify the Act’s interpretation and improve its operation. Consistent with section 171, the review focused on the operation of the Act rather than its policy settings.

This was followed in 2012 by a strategic review of the Act to examine whether the underlying policy settings remained appropriate. A number of recommendations arose from this second review, aimed at providing tangible evidence of responsible authorities’ performance, better visibility of decisions about practitioner practice, greater recognition of the importance of interdisciplinary collaboration and co-operation, and better workforce information.

This Bill implements recommendations arising from both the 2009 and 2012 reviews. It amends the Act to clarify its interpretation and improve its operation. In particular, the Bill:

- amends provisions in the Act to clarify that responsible authorities can receive and act on information from members of the public about the practice, conduct, or competence of health practitioners; and
- amends provisions in the Act to make information about orders made by an authority under sections 38, 39, 48, 50, and 51 more available; and
- amends provisions in the Act to improve the efficiency of processes, including allowing responsible authorities to delegate to a committee their power to appoint a professional conduct committee and giving responsible authorities discretion as to whether to refer notice of minor offences to a professional conduct committee; and
- amends provisions in the Act to improve the efficiency of processes for operating the Health Practitioners Disciplinary Tribunal (the **Tribunal**), including allowing the chair of the Tribunal to issue at any time before a charge is heard an order for the non-publication of names where all parties consent, enabling the Tribunal to set a minimum period within which a health practitioner whose registration has been cancelled cannot apply for reregistration, and enabling the Tribunal to notify any employer of orders made by the Tribunal; and
- amends provisions in the Act to clarify that responsible authorities are responsible for the running costs of the Tribunal;

- amends provisions in the Act so that if a practitioner is involved in a criminal proceeding or an investigation, a responsible authority may order the suspension of the practitioner's practising certificate or registration only if the authority believes the practitioner's alleged conduct poses a risk of serious harm to the public; and
- amends provisions relating to quality assurance activities by reducing the administrative burden of reporting requirements for quality assurance activities; and
- amends provisions relating to scopes of practice and registration to clarify that provisions relating to unpaid fines, costs, or expenses include those imposed under former legislation and to allow a responsible authority to require a health practitioner to be examined by an appropriate health practitioner (other than a medical practitioner, which is already allowed) where the authority considers the health practitioner is unable to perform the functions required for his or her profession because of some mental or physical condition; and
- amends provisions to allow a responsible authority to require a health practitioner to be examined by an appropriate health practitioner (other than a medical practitioner, which is already allowed) where the authority considers the health practitioner is unable to perform the functions required for his or her profession because of some mental or physical condition;
- gives the Governor-General, on the recommendation of the Minister of Health, the power by Order in Council to amalgamate existing authorities when it is in the public interest; and
- requires an authority to promote and facilitate interdisciplinary collaboration and co-operation in the delivery of health services; and
- introduces regular performance reviews of authorities; and
- requires authorities to provide to the Director-General of Health information that will assist with workplace planning and development; and
- includes a regulation-making power to declare a comprehensive list of responsible authorities and the professions in respect of which they are appointed, in order to ensure that authorities are easily identifiable.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p><i>Review of the Health Practitioners Competence Assurance Act 2003: Report to the Minister of Health by the Director-General of Health</i>, published by the Ministry of Health, 2012 and available at: <a href="http://www.health.govt.nz/system/files/documents/publications/report-minister-hpca-jun09.pdf">http://www.health.govt.nz/system/files/documents/publications/report-minister-hpca-jun09.pdf</a></p> <p><i>The Case for Change – Health Practitioners Competence Assurance Act</i>, published by the Ministry of Health in 2014 and available at <a href="http://www.health.govt.nz/our-work/regulation-health-and-disability-system/health-practitioners-competence-assurance-act/review-health-practitioners-competence-assurance-act/case-change">http://www.health.govt.nz/our-work/regulation-health-and-disability-system/health-practitioners-competence-assurance-act/review-health-practitioners-competence-assurance-act/case-change</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>The Regulatory Impact Statement <i>2012 Review of the Health Practitioners Competence Assurance Act 2003</i> was prepared by the Ministry of Health for consideration by the Social Policy Committee on 17 November 2015. The report can be accessed on the Ministry of Health's website at <a href="http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/2012-review-health-practitioners-competence-assurance-act-2003-regulatory-impact-statement">http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/2012-review-health-practitioners-competence-assurance-act-2003-regulatory-impact-statement</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>Quality assurance was provided by the Ministry of Health 'Papers and Regulatory Committee', who were not directly involved in preparing the Regulatory Impact Statement.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>YES</b>
<p>The following changes have been made since the RIS was developed:</p> <ol style="list-style-type: none"> <li>1 A defence of “without reasonable excuse” has been incorporated in respect of the offences for both section 92A and section 95.</li> <li>2 The Bill includes a penalty in the new section 92A (Chairperson may prohibit publication of names pending hearing of charge) to ensure consistency with section 95 (Hearing to be public unless Tribunal orders otherwise). The penalty will mean that anyone who contravenes an order issued by the Chairperson of the Health Practitioners Disciplinary Tribunal (the Tribunal) prohibiting publication of names or other details of a health practitioner and/or any other person pending the hearing of a charge, will be liable on conviction to a fine of up to \$10,000.</li> <li>3 The proposed amendment to the purpose of the Act to “have regard for the importance of the principles of transparency, supporting integrated patient-centred care, supporting workforce flexibility and supporting workforce planning” has been addressed through other amendments, as follows: <ol style="list-style-type: none"> <li>3.1 the principle of transparency is strengthened through the amendments to provide complainants with information that conveys decisions about practitioner practice.</li> <li>3.2 the principles of supporting integrated patient-centred care and workforce flexibility have been strengthened through the additional function of promoting and facilitating interdisciplinary collaboration and cooperation. This clarifies terms such as “integrated patient-centred care” and “workforce flexibility”.</li> <li>3.3 The principle of supporting workforce planning has been addressed through the addition of a section setting out the workforce data that the responsible authorities are required to provide to the Ministry of Health.</li> </ol> </li> </ol>	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>Additional costs relating to performance reviews and data collection will be met by the responsible authorities, through fees collected from their registrants. Such costs are not expected to be significant.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
The Ministry of Health will work with responsible authorities to address any barriers to compliance.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

#### 3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Trans-Tasman Mutual Recognition Act 1997 (TTMRA) prevails over the Health Practitioners Competence Assurance Act 2003. There is nothing in the amendment bill that impacts on the TTMRA.

### Consistency with the government's Treaty of Waitangi obligations

#### 3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

During the consultation process, several submitters suggested that the Act should mention the Treaty of Waitangi. This issue was discussed by the Health Committee when the Health Practitioners Competence Assurance Bill was introduced. The Treaty was not specifically mentioned in the Act because the responsible authorities (RAs) who regulate health professions are not Crown entities, and therefore cannot be seen as Treaty partners. The RAs are, however, required under the Act to set standards for the cultural competence of health practitioners. RAs may choose to adopt the principles of the Treaty as part of the process for setting standards of cultural competence.

### Consistency with the New Zealand Bill of Rights Act 1990

#### 3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Ministry of Justice has advised that the Bill appears to be consistent with the New Zealand Bill of Rights Act 1990.

### Offences, penalties and court jurisdictions

#### 3.4. Does this Bill create, amend, or remove:

##### (a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

##### (b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

The Bill creates the following penalty:

Under section 92A, a person who, without reasonable excuse, contravenes an order issued by the Health Practitioners Disciplinary Tribunal prohibiting the publication of the name or any particulars of the affairs of a health practitioner or any other person commits an offence and is liable on conviction to a fine not exceeding \$10,000.

This is included in order to be consistent with the Tribunal's authority to order hearings to be held in private or to withhold certain publications under s95 of the Act.

The defence of "without reasonable excuse" was inserted in s92A and s95 to provide a defence for a person charged with committing an offence under these provisions, in keeping with recent legislation.



<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice advised that “without reasonable excuse” should be added as a defence and this was included in both s92A and s95.	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
The Bill requires responsible authorities to provide to the Director-General of Health information that will help with workforce planning. Each year, authorities must provide the Director-General of Health with information relating to registered health practitioners holding a current practising certificate. The information will include name, date of birth, employer’s name, place(s) of work and the average number of hours worked each week. The information may only be used to support workforce planning and development.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
The Office of the Privacy Commissioner was consulted and indicated they were comfortable with the proposed amendments to collect data for workforce planning and development. They requested that the Bill specify that the information will not be published in an identifiable form, and this specification has been included.	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p><i>First Review</i></p> <p>During 2007 – 2009, the Ministry of Health:</p> <ul style="list-style-type: none"> <li>- consulted with responsible authorities, health service providers, professional bodies, unions, educators and individual practitioners on the operation of the Act and published the results</li> <li>- commissioned and published an international review of health professional regulation</li> <li>- held consultative workshops to engage stakeholders in developing responses to the issues raised through the surveys.</li> </ul> <p>The Director-General’s report to the Minister concluded that overall, the Act is operating well. A number of recommendations were made to improve the operation of Act, including the legislative amendments in this Bill. A strategic review of the Act was also recommended to examine whether the underlying policy settings remained appropriate.</p> <p>The following government agencies and other public bodies were consulted during the first review: the Accident Compensation Corporation, Health Quality and Safety Commission, Tertiary Education Commission, Ministry for Economic Development, Ministry of Foreign Affairs and Trade, Ministry of Consumer Affairs, Department of Labour, Ministry of Justice, State Services Commission and the Treasury. The Department of the Prime Minister and Cabinet was informed.</p>	

## External consultation cont'd

### *Second Review:*

The strategic review of the Act began in 2012 and included:

- a public consultation process and discussion document
- analysis of 145 submissions
- four focus groups and a teleconference involving responsible authorities, the office of the Health and Disability Commissioner, the Health Practitioners Disciplinary Tribunal, public and community sector health providers, professional associations, union representatives and consumers
- meetings with responsible authorities in 2015 to discuss data collection to support workforce development and planning.

The general conclusion from the consultation was that the Act is working well but five key areas were identified where legislative change could enhance the Act. The five areas all related to the role and functions of the responsible authorities and were to:

- (i) provide an assurance to the public and the Crown that the responsible authorities are carrying out their functions as intended, focused on the principal purpose of the Act and are not at risk of regulatory capture
- (ii) improve transparency about disciplinary proceedings relating to practitioners
- (iii) provide greater recognition of the importance of team work and team communications across multi-disciplinary health practitioners
- (iv) enshrine the principles of transparency, integrated care, workforce flexibility and workforce planning
- (v) improve workforce data collection on which to base health workforce planning.

The following government agencies and other public bodies were consulted during the second review: Accident Compensation Corporation, Department of the Prime Minister and Cabinet, Health and Disability Commissioner, Health Practitioners Disciplinary Tribunal, Ministry for Social Development, Ministry of Business, Innovation and Employment, Ministry of Justice, Office of the Privacy Commissioner, State Services Commission and the Treasury. The Department of the Prime Minister and Cabinet was informed.

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<p>Clause 20 inserts new section 104(1)(ba) which enables the Health Practitioners Disciplinary Tribunal to require a responsible authority to pay a proportion of the Tribunal's general administration costs. General administration costs would include training costs, which are not recoverable under existing section 104(1)(a) or (b) of the Act.</p> <p>When the Tribunal was initially established, its chair and the responsible authorities agreed Tribunal members should receive training for their roles. A need for further training was established in 2007. However, the authorities received legal advice indicating that the Act did not allow for the use of their funds in this way.</p> <p>Parliament clearly intended that responsible authorities should cover all Tribunal costs, as this had been the case prior to the Act when all regulatory bodies maintained their own disciplinary entities.</p>	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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## Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

## Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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## Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
<p>The Bill amends decision-making powers, as follows:</p> <p>Section 17 is amended to provide that if a person applying to an authority for registration or a change to their scope of practice has outstanding fines, costs, or expenses, the Registrar may decline to take any action in relation to that application until those fines, costs or expenses are paid.</p> <p>Section 69 is amended so that if a practitioner is alleged to have engaged in conduct that is relevant to a criminal proceeding against them or an investigation about them, a responsible authority may order the suspension of their practising certificate only if the authority believes the practitioner's conduct poses a risk of serious harm to the public. This suspension threshold is higher than the present threshold of doubt on the appropriateness of the practitioner's professional conduct.</p> <p>New section 92A enables the chairperson of the Health Practitioners Disciplinary Tribunal to prohibit the publication of the name of any person prior to any Tribunal hearing.</p> <p>Section 93 is amended so that at any time after a notice has been given to a health practitioner under section 92(1), the Tribunal may suspend the practitioner's registration if it believes their conduct poses a risk of serious harm to the public. A copy of an order made under this section must be given promptly to the health practitioner concerned, the responsible authority, any employer of the practitioner, any person who works in partnership or association with the practitioner, and the complainant (if any).</p> <p>Section 102 is amended to enable the Tribunal to set a minimum period within which a health practitioner whose registration has been cancelled may not reapply for registration.</p>	

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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