



5 April 2018

Health Practitioners Competence Assurance Amendment Bill 2018

Feedback from: New Zealand College of Midwives
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The New Zealand College of Midwives is the professional organisation for midwifery. Members are employed and self-employed and collectively represent 90% of the practising midwives in this country. There are around 2,900 midwives who hold an Annual Practising Certificate (APC). These midwives provide maternity care to, on average, 60,000 women and babies each year. New Zealand has a unique and efficient maternity service model which centres care around the needs of the woman and her baby.

Midwives undertake a four year equivalent undergraduate degree to become registered. The undergraduate curriculum meets all international regulatory and education standards. Midwives are authorised prescribers in relation to their Scope of Practice as determined by the Midwifery Council.

Midwives provide an accessible and primary health care service for women in the community within a continuity of carer model as Lead Maternity Carers. Midwives can also choose to work within secondary and tertiary maternity facilities, providing essential care to women with complex maternity needs.

The College offers information, education and advice to women, midwives, district health boards, health and social service agencies and the Ministry of Health regarding midwifery and maternity issues. Midwives interface with a multitude of other health professionals and agencies to support women to achieve the optimum outcome for their pregnancies, health and wellbeing.



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1. The New Zealand College of Midwives (the College) welcomes the opportunity once again to provide feedback on proposed changes to the Health Practitioners Competence Assurance Act, specifically the Amendment Bill 2018.
2. The aims of this law amendment are described as being based on recommendations from reviews held in 2009 and 2012, as well as to clarify the Act's interpretation and operation. The College continues to hold the views expressed in 2009 and 2012 i.e.; that broadly speaking the HPCA Act is fit for purpose to meet its principal purpose "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." The Act enables flexibility and enables regulatory authorities to respond to any necessary changes in workforce development and health practitioner service delivery. The College fully supports the overriding interest of the HPCA Act which is the safety, integrity, and quality of care provided by health professionals. However, we consider the current HPCA Act already provides for robust protection of public safety.
3. It is unclear what is meant by 'new ways of working' as described in the document 'The Case for Change'. If it refers to service delivery then team work or any other style of service delivery is in constant flux depending on resources and workforce coverage. Legislation as proposed removes the ability of the health professional/regulation authority to be truly responsive in the interests of the person seeking care whatever their context. Or does this refer to new telehealth projects or other technologic practice? While 'new ways of working' may require regulation and oversight by regulatory bodies, evidenced-based leadership from the Ministry of Health or management by DHBs, the current Act permits this.
4. Proposed amendments include the introduction of regular performance reviews for authorities, improved processes to help the Health Practitioners Disciplinary Tribunal operate more efficiently, and, clarification that responsible authorities can receive and act on information relating to the practice, conduct or competence of health practitioners.

5. The College strongly agrees that members of the public should feel reassured that the health practitioners providing care to them are competent, up to date and safe.
6. In our experience the HPCA Act already provides a robust regulatory framework to meet these requirements. In the case of midwives, the Midwifery Council administers this function well. The Midwifery Council has open processes, consumer friendly easy access on their website, and they also consult widely on scope of practice, education and recertification. Aspects of midwifery on-going education, in terms of competence and safety have, already been made mandatory by the Midwifery Council and midwives have long been able to access the quality education required to meet the expected standards and competencies of the midwifery profession. Midwives who are not meeting the necessary requirements are unable to maintain their annual practicing certificate. In this sense, midwifery has never operated under what are described as “ambulance at the bottom of the cliff” scenarios. Midwifery is already woman-centred and consumer focussed and requires formal feedback from the consumer as a mandatory factor of its regulation requirements.
7. The College addresses specific clauses of the Health Practitioners Competence Assurance Amendment Bill below.
8. The College opposes the inclusion of Clauses requiring Responsible Authority to give copies of various Orders to “any person who works in partnership or association with the practitioner”.
 - 8.1 These clauses are found at:
 - 8.1.1 Clause 8; adding, inter-alia, a new section 39(3A) (a) (iii);
 - 8.1.2 Clause 9(3); substituting section 46 with, inter-alia, a new section 48(6) (a) (iii);
 - 8.1.3 Clause 11(2); substituting section 50(6) (a) with, inter-alia a new section 50(6) (a) (iii);
 - 8.1.4 Clause 12(4); substituting section 51(6) (a) with, inter-alia a new section 51(6) (a) (iii);
 - 8.1.5 Clause 15(3); substituting section 69(5) with, inter-alia a new section 69(5) (a) (iii)
 - 8.2 The College considers that any information shared that is related to a review of a health practitioner’s competence should be done so under a ‘need to know’ provision. All practitioners have a right to natural justice and appropriate privacy codes. We do not consider this right to be in conflict with the aims of ensuring safety, competency and care for the public.

- 8.3 The College considers the scope is not only too wide in terms of information sharing related to a health practitioner it is unmanageable given the wide networks that health practitioners work within. What is the definition of 'in association'? Again a 'need to know' approach is necessary and indeed the only practicable, manageable and reasonable option. We consider it reasonable to inform a midwife's practice partner or colleagues if in a group practice or the appropriate manager of a clinical team within a maternity facility if the midwife is employed. However, for this to apply to all persons in 'association' with the practitioner either within a maternity facility or the community to be informed is not only unreasonable, but practically impossible to administer. We are also concerned about the excessive potential for significant privacy breaches. The disclosure of a midwife's personal information/health history may well be unnecessary in all cases including from time to time providing this information to practice partners or employers. The College does not consider a more cautious response to disclosure to be in conflict with the aims of ensuring safety, competency and care for the public.
9. Clauses relating to amalgamation and review of authority.
- 9.1 The College seeks an amendment to clause 116A (2) (a) by adding after the words "authorities" the words "and health professions"
- 9.2 The College seeks an amendment to clause 122A (4) by adding after the words 'in consultation with the authority' the words "and health profession concerned,-"
- 9.3 In the College's view consultation must include the profession under regulation.
- 9.4 Currently all costs are ultimately funded by the profession. Any review or amalgamation must be an affordable and effective process. In addition, the exercise of authority power under the Act will directly affect the day to day activities of midwives and also the fees they have to pay.
- 9.5 Different professions have different levels of status and women's professions experience considerable predetermined bias from more dominant paradigms often with little knowledge of the specialist body of knowledge required. The College considers it a matter of concern as to the loss of professional identity upon amalgamation, and independence of the reviewer in terms of transparent selection processes, performance indicators and review processes. What would the reviewers professional/regulation/evaluation background be? Crossing over of regulatory bodies into other professional areas seems to us to be both unsafe and unworkable. The College is also interested in how the terms of reference will be developed. The profession concerned has an interest in the terms of review and would expect to contribute its views upon any review.

10. Naming policy – clause 157A

We have noted some differences in wording between how the proposed changes are described in the Explanatory note which states as follows:

"New Section 157B requires every authority to issue, within 12 months, a naming policy that sets out when a health it whose competence, ability, or conduct is reviewed or investigates by the authority may be named...." and;

the actual wording of clause 157B (2) (b) which refers to *"health practitioners whose conduct has not met expected standards"*.

- 10.1 The use of the word “conduct” in the Act is widely understood to refer to disciplinary processes. There is a risk that clause 157B (2) (b) as currently worded will be interpreted as referring to matters of conduct and will exclude other matters such as competence.

Conclusion

The College does have some concerns about the processes undertaken prior to the HPCA Amendment Bill. The omission of prior consultation with the professions and stakeholders involved, and the lack of consumer consultation raises concerns about purpose.

Regulatory authorities are not homogenous as all have distinct professions with different roles/level of risk to regulate. Some do better than others and review as proposed can help regulators with this. Any legislation change (particularly if in response to a single/small group of regulators) that does not overtly consider the consequences on all health practitioners will do more to harm to public safety and satisfaction than protect it. Legislation must strengthen the educative and rehabilitative intention of the original Act (rather than make it unnecessarily punitive) if we are to progress as a society.

The College does not consider the current HPCA Act to be a barrier to better healthcare, team work or cross-disciplinary teamwork. Health professionals already work well in teams, and liaise/communicate with each other in appropriate settings using shared standards of care when applicable. Although communication processes could be improved at times this is not a reason to make major changes to the Act. A pertinent factor apparent in communication process breakdown and inter-professional communication is the under-staffing of our hospitals which has become more acute over the past few years. Changes to the HPCA Act will not secure changes in this regard.

As indicated in the introductory paragraph the College would be interested to learn more about what has been described in the ‘Case for Change’ as ‘new ways of working’.

The College fully supports the overriding interest of the HPCA Act which is the safety, integrity, and quality of care provided by health professionals. However, we consider the current HPCA Act already provides for robust protection of public safety. We agree that there may be some barriers to information access for some sectors of the population, for example those without reliable internet access, some rural populations, and those for whom English is a second language. It is not necessary to change the Act to address these important issues. Accessible ongoing education and support for both consumers and health practitioners is a much safer and more effective way to protect public safety. The Midwifery Council has always successfully worked to provide these frameworks for the midwifery profession under the current Act.

The College wishes to speak to the committee regarding this submission.

Yours sincerely



Karen Guilliland
Chief Executive