



College of Nurses Aotearoa (NZ)

Submission to the Ministry of Health

on the

Review of the Health Practitioners Competence Assurance Act
(2003)

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Introduction

Our representatives[s] wish to appear before the committee to speak to our submission. Please contact Professor Jenny Carryer, Executive Director, on 027 449 1302 or via the College office on 06 358 6000.

The College of Nurses Aotearoa (NZ) (hereafter referred to as 'the College') is a professional body of New Zealand nurses from all regions and specialities. We provide a voice for the nursing profession and professional commentary on issues that affect nurses and the health of the whole community.

This submission was collated by Debbie Penlington for the College following consultation within the College leadership structures and positions throughout the country.

Responses to Questions

1. Is the Act achieving its purpose? Please explain.

The College believes that overall the Act protects the health and safety of members of the public by providing mechanisms to ensure health practitioners are competent and fit to practise their professions. However we agree with NZNO that there has been an overzealous interpretation of the Act by some RAs relating to their obligation to ensure competence which has resulted in increased stress and workload for practitioners. Examples include the need to validate participation in professional development activities and meeting recertification requirements. A review that focuses on finding mechanisms which are known to measure competence but which can be complied with as simply as possible would be appropriate.

We are aware that nurses working in aged care and rural areas find it particularly difficult to access peer review opportunities and to be released to participate in education activities. A reduction in money spent on monitoring compliance could be redirected to reduce the barriers these nurses experience.

We recognise the value of each health profession having a specific RA and agree with NZNO that there are a number of functions such as registration, certification of overseas applicants, issuing of APCs and collecting data which could be rationalised for greater efficiency and a more robust and consistent regulatory framework across all health professions. Standardised collection of significant information about the health workforce would enhance workforce planning and the effective operation of a safe health system.

Through our consumer networks with the Women's Council we have become aware of concerns regarding the quality of services offered by individuals / volunteers who advertise in the Yellow Pages under counselling services when they are not qualified counsellors. We recognise that at this point counselling does not fall under the HPCA legislation however we would encourage this to be considered in the future.

While competence review is aimed at supporting a nurse to further develop their knowledge and skills in areas that have been identified as lacking, our experience is similar to NZNO in that the system becomes punitive when employers are reluctant to employ, supervise or support nurses with competency restrictions. The flow-on effect of this is that nurses may move to less acute areas where there may be even less support or they leave nursing altogether.

We understand that some nurses in Management positions, Non Government Organisations (NGOs) and Aged Care sectors are facing pressure not to renew their practising certificates. Overall this will reduce the nursing workforce and for individual nurses it will restrict future career opportunities.

2. *What evidence supports your answer?*

Our response has been informed by feedback from our membership and evidence from Nursing Council of New Zealand (the Responsible Authority) including reports on disciplinary processes; documented scopes of practice; consultation documents; practice competencies.

3. *What, if any, comments do you have on the adequacy of evidence available about the success of the Act and any changes needed – including, for example, any reporting requirements that might ensure more open access to evidence that the Act is being effective.*

With the relative newness of the Act we are not convinced that the majority of individual professionals and / or employers have a clear understanding of their responsibilities under the HPCA in terms of competence and fitness to practise. A regular summary of activity and outcome across all professional groups (such as included in appendix 5 of the consultation document) would be appropriate to increase understanding. The usefulness of this could be further enhanced with the addition of the source of referral and the overall size of the workforce population e.g. 80 nurses out ofnurses.

4. *Are the provisions in section 7 of the Act operating in a way that ensures that non-qualified persons do not claim or imply to be qualified practitioners and what, if any, changes do you recommend (note that issues around enforcing breaches are dealt with in the section titled 'Enforcement of the Act' which is set out below)?*

We believe the Responsible Authorities enact these provisions very effectively however we are concerned at aspects related to advertising. Some employment advertisements indicate not all employers understand section 7 e.g. advertisements for Nurse Aides which imply the position is regulated when it is not. Also advertisements for sex, massage and fantasy services in the classified sections frequently refer to "nurse" which may indicate that publishers are unfamiliar with aspects of the act related to reservation of title. There is no evidence that breaches such as this are acted upon.

Where confusion may arise for the public in relation to the nursing role we agree with NZNO that the act needs to be strengthened to ensure employers are responsible for informing the public of distinctions.

We also agree with NZNO that considering the potential and actual damage that can result from the actions of non qualified people we would like to see the penalty increased; \$10000 seems totally inadequate.

5. *Are the provisions in section 8 operating effectively and what, if any, changes would you recommend?*

We believe section 8 is enacted effectively however an annual process is work intensive. Efficiencies could be gained by moving to a two yearly process and releasing resources to ensure competence reviews are undertaken in a timely manner; some nursing competence reviews have taken up to six months.

The consequences for a Health Professional acting outside their scope of practice could be more clearly stated.

6. *Are the provisions in section 9 and the current list of restricted activities operating effectively and what, if any, changes, amendments or additions would you recommend?*

We believe section 9 is enacted effectively and we have no changes to propose.

7. *Is the Ministry approach to enforcement of the Act in keeping with the purpose of the Act and what, if any, changes would you recommend?*

We do not have sufficient evidence to make an informed comment on this aspect.

8. *Are scopes of practice achieving their intent? Please explain.*

We believe the scopes of practice are achieving their intent and clearly define the parameters for each profession and level of education.

The College would like to make two comments raised in Barbara Saffreit's 'Changes in healthcare professions' scope of practice: Legislative considerations' that are salient in contemporary health care practice:

- 1) Increasingly, overlap of professions is a necessity; therefore no one profession owns a skill or activity in and of itself.
- 2) Fluidity of Scope of practice is important as knowledge development grows exponentially. As such no one professional is able to be competent in all aspects of their scope of practice.

9. *What, if any, comments do you have on the operation of the powers that registration authorities hold to allow conditions or authorisations on individuals' scopes of practice?*

While we acknowledge the difficulties small employers, e.g. Primary health care organisations, may face in delivering services when an employee is restricted in their practice, we believe it is entirely appropriate for Responsible Authorities to have and to maintain these powers as it enables them to take into account contextual and individual variances while still protecting public safety.

Where a Health Professional has restrictions to his / her practice a reasonable time frame should be available for them to demonstrate their competence before their APC is withdrawn.

10. *Is the process for developing scopes of practice operating well (e.g., are there suitable mechanisms for ensuring scopes of practice reflect service need) and what, if any, changes would you recommend?*

Overall the process works well, however the consultation regarding the Nurse Assistant has been drawn out, laborious and at times, the College believes, inappropriately influenced by political involvement, to the detriment of addressing other more appropriate ways of managing the need for a support workforce.

11. *Do prescribed qualifications reflect scopes of practice? Please explain with reference to particular scopes of practice and considering whether a) the levels of qualification are too low or too high when considering their purpose of assuring public safety, and b) whether they meet the requirements of section 13.*

We believe the level of qualification assigned to the Registered Nurse, Nurse Assistant and Nurse Practitioner are all appropriate; they reflect the relevant scope, competencies, knowledge, reasoning skills and professionalism required. There is ongoing debate as to whether the nursing degree should be extended to four years and the College would support this move. In particular we would be keen to see a discussion on the merits or otherwise of including the first year of clinical practice as the fourth year of the qualification.

The College agrees with NZNO's view that further work is required on the Ministry of Health's Career Force Framework. We believe it adds absolutely nothing to issues of competency review and it has the potential to cause major confusion.

12. *With regard to their purpose of assuring the competence of registered professionals, how well are the current recertification regimes working (where possible refer to particular professions)?*

Overall, linking hours and professional development requirements to the recertification process has been positive for nursing. We believe there has been an increase in the number of nurses seeking professional development and increased support from employers enabling participation. While the process of collating and presenting evidence in response to a Nursing Council audit has been a difficult one for some nurses, the anxiety associated with this will continue to decrease as more people become familiar with the requirements.

Some challenges exist when Responsible Authorities refer registered nurses to educational institutions and ask them to provide both an initial assessment of the practitioner's competence and an individualised programme to meet the deficit.

13. *What changes, if any, are needed to improve the evidence available to answer the previous question?*

We would strongly recommend that the Nursing Council as the Responsible Authority appoints an approved independent assessor to identify areas requiring additional development prior to referring the individual to the educational institution for the individualised programme.

Funding is required to further develop supervision and peer review within nursing.

14. *Where recertification arrangements are in place, what issues arise and what changes, if any, would you suggest (eg, in respect of the nature of the programmes, the level of compliance, monitoring practitioners' compliance, the costs and other impacts on practitioners employers etc)?*

Establishment and delivery of an individualised programme is likely to incur significant cost for the individual nurse. Where a clinical component of the programme is required access to a clinical learning environment can also be very difficult to arrange as nurses in this situation may have already left their employment and other providers are reluctant to take on the risk. There is also likely to be the added cost of the placement.

We support a two-year recertification programme which would be more manageable for participants and less costly to administer.

Provision for cross crediting for those HPs with dual professions would be desirable.

15. *Where recertification programmes have not been introduced how do the authorities assure competence, and are there ways that these processes could be improved?*

We do not have adequate information available to make an informed comment on this aspect.

16. *What would be the gains or problems associated with requiring all authorities to institute recertification programmes?*

Thresholds of safe practice and minimal competence could be more confidently assured. Practical aspects like funding of individualised programmes could be clarified at a national level.

17. *Registration authorities have to judge when a practitioner 'may pose a risk of harm to the public' and trigger notification: is this working effectively and what, if any, suggestions do you have to improve effectiveness?*

We do not have adequate information available to make an informed comment on this aspect.

18. *Is it appropriate that authorities must notify a particular set of agencies: what changes, if any, are needed?*

Generally, yes, however section 35(2) does raise some concern as to what criteria the

Responsible Authority will use to determine whether they would "... give written notice to any person who works in partnership or in association with the practitioner of the circumstances that have given rise to ..." the belief that they have "... reason to believe that the practice of the health practitioner may pose a risk of harm to the public...". The consequences of such action should the allegations be unfounded could have significant negative impact on collegial, business and professional relationships.

19. *At what times, if any, other than when there is a concern of a risk of harm to the public, should a registration authority exercise its power to review the competence of a health practitioner?*

- If a registered health professional changes their scope of practice and requires some interim monitoring i.e. a provisional period of time.
- Possibly when a professional moves from one 'specialty' setting to another i.e. from mental health to surgery or paediatric intensive care to mental health.

20. *Is voluntary reporting by practitioners of possibly unfit practitioners working, on what do you base this opinion, and, in the light of experience, what are your views on making it a requirement to report concerns about a possibly unfit practitioner?*

The College believes that overall this working well. However we are aware of an issue for educational institutions when registered health practitioners attend either professional development courses and / or postgraduate study and during the educational experience significant concerns are raised regarding the practitioner's practice in regards to their professionalism and / or deficits in knowledge base and/or unethical practice and / or lack of competency.

This puts education providers in a very difficult situation when the person is already registered, employed and practicing. While section 45(4) requires educational institutions to report if the basis of the concerns relate to "... inability to perform required functions due to mental or physical condition(s).. ", when the concerns relate to other issues as mentioned above, there is no mandate required to report. We believe this should be reconsidered.

The 'may' and 'must' requirements are potentially confusing; we fully support that it becomes a requirement to report concerns about a possibly unfit practitioner.

21. *Is compulsory reporting by employers of possibly unfit practitioners working, on what do you base this opinion?*

We do not have adequate information available to make a detailed comment on this aspect. However we are aware that there have been instances where the work environment has been so stressful that this has impacted on an individual's ability to perform. This is particularly noticeable with new graduates who immediately prior to completion of their undergraduate programme are assessed as being competent, then they experience difficulties in their employment.

22. *Are the interests of the public and of practitioners being balanced when dealing with the risk of harm from practitioners who are deemed to fail to meet required standards of competence? Please explain.*

Two aspects cause us concern in this area. Firstly, in some instances, institutions (e.g. in Older Persons Health) are not named when staff have been found to be negligent which raises concerns about people's right to transparency of information. We note the HDC to be currently reviewing this. Secondly, in respect of nurses working in general practice, many practices only have one nurse. There is no contingency workforce and so to suspend a nurse would cause a financial burden and a burden in terms of in terms of delivering the service contract.

23. *In practice, do competence and recertification programmes differ, are both sets of provisions needed or should changes be made?*

Competence and recertification have the potential to be addressed by the same programmes.

24. *Should any other parties be obliged to inform the registrar of a practitioner's inability to perform their required functions because of a mental or physical condition?*

The College believes that other parties such as a counsellor, psychotherapist or a registered health practitioner who is treating or providing therapy for another registered health practitioner who has a mental or physical condition and who believes that in their professional opinion that their client's current health status raises significant concerns about their ability to perform the required functions of their profession should be obliged to report.

With reference to this we note section 45(1)(b) refers to "... a health practitioner;" clarification is requested whether the term used in this clause means "any health practitioner" and is all

encompassing. Furthermore, clarification is sought regarding the consequences to any health practitioner should they not comply with the mandatory reporting.

25. *Are the interests of the public and of practitioners being balanced when dealing with fitness to practise issues? Please explain.*

Generally, yes.

26. *Are protected QAAs operating in areas you are familiar with: are they valuable, are there any problems, are the reporting requirements appropriate, should there be any changes to the QAA arrangements, should QAAs continue? Please explain.*

We do not have adequate information available to make an informed comment on this aspect.

27. *Are PCCs being used by the registration authorities you are familiar with, how often and for what reasons?*

While not directly involved, the College understands that a PCC is used in the Pharmacy area in relation to complaints from the Complaints Assessment Committee, fraud and unbecoming professional conduct.

28. *To what extent is the suspension of an annual practising certificate and referral of a practitioner to the HPDT effective in protecting the public?*

We do not have adequate information available to make an informed comment on this aspect.

29. *What, if any, additional steps should be taken into account when determining to suspend an annual practising certificate?*

Consideration must be given to the work environment and whether this is impacting on an individual's ability to practice at the required standard.

We agree with NZNO that a reasonable time period should be given to demonstrate additional competencies.

30. *What, if any, benefits or problems have arisen from having a single tribunal for all regulated professions and what, if any, changes would you recommend?*

Benefits include consistency of policy and application of the legislation.

We would recommend clinical approval of expert witnesses.

31. *Is the current membership structure of the HPDT operating and are there any changes you would recommend (for example, the mix, the selection and appointment processes, training of members)?*

The College believes that the majority of members of the HPDT should be professional peers as:

- a) While we unreservedly support the inclusion of lay members on the Tribunal, we believe a lay majority will adversely affect the quality of decisions. The profession of nursing is beset with stereotypes. Nurses are perceived by the public as:
 - handmaidens to doctors, with a duty to obey doctors; or
 - angels of mercy who can do no harm; or
 - simply domestic workers who clean up after people.
- b) All of these stereotypes have provided nurses with successful defences against legal suit [Gregory v Ferro (GB) Ltd and Others (1995) 6 Med LR 321; Lahey v St Joseph's Hospital (1992) 123 NBR (2d)], protected them from the adverse comment during coronial inquiries,⁶ and during commissions of inquiry.⁷ Therefore misperceptions of nursing can be employed to nurses' legal advantage, when non-nurses adjudicate on nursing care.
- c) Where nurses are scrutinised by nurses, stereotypes fail. The Nursing Council of New Zealand has had a single appeal found against it, with respect to disciplinary decisions. Similarly, the Health and Disability Commissioner relies upon the advice of health practitioners when determining whether the Code of Health and Disability Services Consumers' Rights has been breached. Nurses understand the scope of their practice, what are reasonable expectations of other nurses and where there has been breach of duty. If the Health Practitioners Disciplinary Tribunal is to have a lay majority, then decisions could be determined stereotypes rather than actual breaches.
- d) We submit that three health practitioners should represent the relevant profession when a tribunal is convened.

32. *Is there a need for the HPDT to have the capacity to deal with multi-practitioner/ team-based disciplinary matters and, if so, how should this be organised?*

We do not see a need for a multi practitioner based approach; the most appropriate professionals to deal with issues related to a specific health practitioner are from that profession.

33. *Are the current arrangements for financing and supporting the HPDT, appropriate and what, if any, changes would you recommend (including the costs of taking cases to the tribunal and sustaining the operation of the tribunal)?*

The costs appear to be passed onto members of discrete regulated professions which is appropriate, however for those professions where there is small membership numbers costs may be excessive.

34. *Are the appeal provisions operating well and what, if any, changes would you recommend?*

We do not have adequate information available to make an informed comment on this aspect.

35. *How do you think the current number and mix of professions and authorities is operating and what, if any, changes do you think should be made?*

The current number and mix of professions and authorities is operating well. In terms of efficiencies, minimising costs, implementing best practice issues and enabling consistency of approach toward assuring competence inter-professionally, we believe there is some significant merit for the combining of those health professions with smaller memberships together under a larger authority to enable greater operational, fiscal and policy consistency. Furthermore, consideration regarding having combined New Zealand and Australian regulatory authorities needs to be seriously explored especially for those professions with smaller memberships as there appears to be significant benefit to having combined Trans-Tasman regulatory authorities both in regards to efficiencies, costs, competence, standards and public safety.

36. *Are the provisions for adding new professions or health services working and what, if any, changes would you make?*

We have insufficient information available to comment on the process of adding new professions or services, however in view of the feedback we have received regarding counsellors we would urge consideration of their inclusion under the Act.

We agree with NZNO that there is a need for a consistent framework and systems that provide consistency for new groups and reduce set up costs.

37. Are the current membership and appointment provisions working (eg, is the size and mix right, are people with the best skills being appointed, should the power to hold elections be retained and/or used, are lay and professional members appropriately trained and supported) and what changes, if any, would you recommend?

Generally these appear to work satisfactorily however we note the lack of members with educational expertise on the Nursing Council and propose that at least two individuals on any responsible authority have current educational experience to ensure decisions that impact on the education of health practitioners are well informed.

38. What deletions, amendments or additions, if any, do you recommend to the list of functions – and why?

We believe the list is comprehensive and appropriate.

39. How well are authorities carrying out their functions and what changes, if any, do you recommend?

Generally authorities do this satisfactorily however our members from educational providers believe closer liaison and consultation with the education sector would be beneficial in promoting collaboration.

40. Are there any specific legislative requirements that regulatory authorities are currently subject to that they should not be? Please explain.

We do not have adequate information available to make an informed comment on this aspect.

41. Are there any specific legislative requirements that regulatory authorities should be subject to that they are currently not? Please explain.

We do not have adequate information available to make an informed comment on this aspect.

42. To what extent are the current powers of the Minister of Health appropriate to the purpose and effectiveness of the Act and what changes, if any, do you recommend?

We do not believe the Minister of Health requires further powers.

43. *What changes, if any, do you recommend to matters covered by the provisions of Part 7 of the Act?*

No comments.

44. *What changes, if any, do you recommend to specific wording in the Act in order to clarify or address technical issues not otherwise covered already?*

No comments.

45. *What, if any, other matters are you aware of in respect of the operation of the Act and what changes do you recommend?*

The College believes the HPCA Act enables the public to be assured that they are protected from incompetent and unethical practitioners, and that the nursing profession provides safe and effective health promotive nursing care. However we are also of the opinion that Practitioner competence is only one aspect of assuring public safety.