

The following submissions are made by the Occupational Therapy Board of New Zealand. They are presented below by:

1. responding to the proposed amendments presented in the Health Practitioners Competence Assurance Amendment Bill; and,
2. additional amendments proposed by the Board.

The information is presented in numerical order.

<p style="text-align: center;">Proposed Amendments (shaded section indicate amendments)</p>	<p style="text-align: center;">Comments and submissions</p>
<p>Section 17 amended (Applications for registration of health practitioners and authorisations of scopes of practice)</p> <p>(1) After section 17(4), insert:</p> <p style="background-color: #e0e0e0;">(4A) If any fine, costs, or expenses imposed on a former health practitioner by or under a former registration Act remain unpaid, the Registrar may decline to do any act, or to permit any act to be done, in relation to the registration of that health practitioner until the fine, costs, or expenses are paid.</p> <p>(2) In section 17(5), after “subsection (4)”, insert “or (4A)”.</p> <p>(3) Replace section 17(6) with:</p> <p style="background-color: #e0e0e0;">(6) Subsections (4) and (4A) override subsection (3).</p> <p>(7) In subsection (4A),—</p> <p style="background-color: #e0e0e0;">former health practitioner means an applicant who, at any time, has been—</p> <p style="background-color: #e0e0e0;">(a) registered under a former registration Act; or</p>	<p>The Board questions the utility of this amendment. It would appear to apply to a person who was registered prior to the HPCAA in September 2003. If a fine did exist they may have been written off under usual accounting practices.</p> <p>However, some people may be paying fines by instalments from a previous registration Act. We have not encountered this in our experience.</p> <p>Submission:</p> <p>This amendment is not required.</p> <p>Submission:</p> <p>Section 17 - 19</p> <p>That an additional amendment which allows the Registrar of the authority to decline to register a person because they have submitted misleading or false information. Adding this amendment would bring it in line with the ability to decline in section 27(3) and 146(1)(a).</p>

(b) deemed to be registered under a former registration Act

former registration Act has the meaning given to it by section 178(1).

Submissions:

Additional amendment – section 30A

That following section 30 –Currency of annual practising certificate
an additional section **30A – Issuing of practising certificates**

The amendment to read:

That the Registrar of the authority may issue a practising certificate by electronic means. The on-line register on which the name of practitioner appears is evidence that the practitioner has a practising certificate.

A number of authorities issue (by posting out) hard copy practising certificates to practitioners. This process is time consuming and costly. All authorities have on-line registers which shows the name of the practitioners and whether they have a current practising certificate. The Boards position is that this is sufficient evidence of holding a practising certificate. This would satisfy most third parties when searching for evidence of a practitioners APC.

The Board believes this amendment would future-proof IT developments.

	<p>Additional amendment – section 39</p> <p>The Board consider that the ability to immediately suspend where the practitioner presents a serious risk of harm due to issues of competence needs to be added to this section.</p>
	<p>Part 3 Competence, fitness to practise, and quality assurance 34 Notification that practice below required standard of competence Section 34 (1) (2)</p>
	<p>Section 34 (1)(2) reads:</p> <p>(1) If a health practitioner (health practitioner A) has reason to believe that another health practitioner (health practitioner B) may pose a risk of harm to the public by practising below the required standard of competence, health practitioner A may give the Registrar of the authority that health practitioner B is registered with written notice of the reasons on which that belief is based.</p> <p>(2) If a person holding office as Health and Disability Commissioner or as Director of Proceedings under the Health and Disability Commissioner Act 1994 has reason to believe that a health practitioner may pose a risk of harm to the public by practising below the required standard of competence, the person must promptly give the Registrar of the responsible authority written notice of the circumstances on which that belief is based.</p> <p>Submission:</p> <p>34 (1) The Board believes that the words “may” should be replaced by the words “must”. In our experience very few practitioners notify concerns about another practitioner. Having a mandatory requirement to do so is a matter of public and practitioner safety. Along with this requirement is the judgement required of the reporting practitioner. We believe that the judgement should be made by the authority not the practitioner.</p>

	<p>For example it would not be appropriate for a nurse to make a judgement about the competent practice of occupational therapist. We believe this judgement should be made by the responsible authority.</p> <p>34(2) Similarly the HDC has to make a judgement about competence we believe this should be made by the responsible authority, and the notification requirement limited to the holding of concerns about competence.</p> <p>In section 34(3) The word "must" is used for an employer to give notice to the registrar. This appears to be at odds with the "may" requirement of section 34(1).</p>
<p>Section 36 amended (When authority may review health practitioner's competence)</p> <p>After section 36(3), insert:</p> <p>(3A) An authority that receives a notice under section 34(1) or (2) must inform the person from whom the notice was received as to whether it has decided to conduct a review of the competence of the health practitioner the subject of the notice.</p>	<p>Submission:</p> <p>The Board supports this amendment. However, the Board feels this requirement to inform should extend to members of the public who may not have been the person providing the information but may have been a recipient of care and treatment by the practitioner being reported. Clarity on the extent to which the Board can inform related parties would be welcome.</p> <p>This would also apply to the referral from the HDC that the authority review the practitioner's competence. Often the original complainant is not updated with the process and outcome of the authority's actions.</p>
<p>Section 38 amended (Orders concerning competence)</p> <p>After section 38(3), insert:</p>	<p>Submission:</p> <p>That the term "by post" in 38 (4) should be changed and say "and or electronic" (e-mail) means. The change in postal services has</p>

<p>(3A) If an order is made under subsection (1) following receipt of a notice given under section 34(1) or (2), the authority must, within 5 working days, inform the person from whom the notice was received that an order under subsection (1)(a), (b), (c), or (d), as the case may be, has been made.</p>	<p>meant it is not a reliable means of communication within a designated timeframe. The Board would like the latitude to send a notice by email. By this point in the process communications are usually well established with the practitioner, many involving email communications.</p>
<p>Section 39 amended (Interim suspension of practising certificate or inclusion of conditions in scope of practice pending review or assessment)</p> <p>After section 39(3), insert:</p> <p>(3A) If the authority makes an order under subsection (2), the Registrar of the authority must ensure that—</p> <p>(a) a copy of the order is given, within 5 working days after the making of the order, to—</p> <p>(i) the health practitioner concerned; and (ii) any employer of the practitioner; and (iii) any person who works in partnership or association with the practitioner; and (iv) if the review was or is to be conducted after receipt of a notice given under section 34(1) or (2), the person from whom that notice was received; and (b) all administrative steps are taken to give effect to the order.</p>	<p>Submission:</p> <p>The Board supports the amendment but would ask that express statutory power to include informing any complainant.</p>

<p>Section 48 amended (Interim suspension of practising certificate or inclusion of conditions in scope of practice in cases of suspected inability to perform required functions due to mental or physical condition)</p> <p>(1) In section 48(1), after “considers”, insert “(whether or not as a result of a notice given under section 45 or of a recommendation made under section 79)”.</p> <p>(2) In section 48(3), replace “subsection (1)” with “subsection (2)”.</p> <p>(3) Replace section 48(6) with:</p> <p>(6) If the authority makes an order under this section, the Registrar of the authority must ensure that—</p> <p>(a) a copy of the order is given, within 5 working days after the making of the order, to—</p> <p>(i) the health practitioner concerned; and</p> <p>(ii) any employer of the practitioner; and</p> <p>(iii) any person who works in partnership or association with the practitioner; and</p> <p>(b) all administrative steps are taken to give effect to the order.</p> <p>(7) If an order is made under this section following receipt of a notice given under section 45, the authority must, within 5 working days after the making of the order, inform the person from whom the notice was received that an order under subsection (2)(a) or (b), as the case may be, has been made.</p>	<p>Submission:</p> <p>The Board supports the amendment but would ask that express statutory power to include informing any complainant.</p>
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Section 49 amended (Power to order medical examination)

- (1) Replace the heading to section 49 with "**Power to order examination or testing**".
- (2) In section 49, replace "a medical practitioner" with "an assessor" in each place.
- (3) In section 49, replace "the medical practitioner" with "the assessor" in each place.
- (4) Replace section 49(5) with:
- (5) An assessor who conducts an examination or a test under this section may consult any other practitioner who the assessor considers is able to assist in the completion of the examination or test.
- (5) After section 49(7), insert:
- (8) In this section and section 50, **assessor** means a medical practitioner or any other health practitioner.

Submission:

The Board supports the change from "medical practitioner" to "assessor". This allows the Board scope to identify the most appropriate professional to undertake the examination or testing.

Section 2 (iii) requires that the practitioner is given 5 days' notice of the date of the assessment. Having this time frame may affect the ability to test for drugs and alcohol as 5 days may allow for substances to be cleared from the blood.

The Board considers that in subsection 5 of the amendment the term "other practitioner" may be too restrictive. For example, this would preclude the assessor obtaining information from a counsellor or iwi elder. The Board suggests the following – "may consult any other health practitioner or persons who the assessors considers"...

<p>Section 50 amended (Restrictions may be imposed in case of inability to perform required functions)</p> <p>(1) In section 50(1)(a), replace “medical practitioner” with “assessor” in each place.</p> <p>(2) Replace section 50(6)(a) with:</p> <p>(a) a copy of the order is given, within 5 working days after the making of the order, to—</p> <p>(i) the health practitioner concerned; and</p> <p>(ii) any employer of the practitioner; and</p> <p>(iii) any person who works in partnership or association with the practitioner; and</p> <p>(3) After section 50(6), insert:</p> <p>(6A) If an order is made under subsection (3) or (4) following receipt of a notice given under section 45, the authority must, within 5 working days after the making of the order, inform the person from whom the notice was received that an order under subsection (3) or (4), as the case may be, has been made.</p>	<p>Submission:</p> <p>The Board supports the amendment. However, it is important to make clear that it is the registrar of the authority that must action this.</p>
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<p>Section 51 amended (Revocation of suspension or conditions)</p> <p>(1) In section 51(1), replace "section 39 or section 50" with "section 39, 48, or 50".</p> <p>(2) In section 51(2), replace "section 39 or section 50" with "section 39, 48, or 50".</p> <p>(3) In section 51(3), replace "section 39 or section 50" with "section 39, 48, or 50".</p> <p>(4) Replace section 51(6)(a) with:</p> <p>(a) a copy of the order is given, within 5 working days after the making of the order, to—</p> <p>(i) the health practitioner concerned; and</p> <p>(ii) any employer of the practitioner; and</p> <p>(iii) any person who works in partnership or association with the practitioner; and</p> <p>(iv) any person who,—</p> <p>(A) under section 39(3A)(a)(iv), has received a copy of an order made under section 39 to which the revocation relates; or</p> <p>(B) under section 48(7) or 50(6A), has received a copy of an order made under section 48 or 50 to which the revocation relates; and</p>	<p>Submission:</p> <p>The Board considers that clarification as to what is meant by the term "giving of an order" to those identified in the amendment (a)(i) –(iii) (A) and (B). An order may contain personal information which may not be appropriate to provide.</p>
<p>Section 58 amended (Reporting requirements)</p> <p>In section 58(1), replace "6 months" with "1 year".</p>	<p>No submission</p>
<p>Section 67 Notification of convictions</p>	<p>Submission</p> <p>In the Board's experience it very rarely receives a notice of conviction from the registrar of the court. The Board tends to find out a conviction has happened from the practitioner a third party or through the media. There appears to be a lack of communication between the registrar of the court and the responsible authorities. We are unclear as to how this can be addressed as the requirement within section 67 is very clear. The</p>

	result of not receiving a court conviction can provide difficulty for a PCC.
<p>Section 68 amended (Referral of complaints and notices of conviction to professional conduct committee)</p> <p>(1) Replace the heading to section 68 with “Referral of complaints, notices of conviction, and information to professional conduct committee”.</p> <p>(2) Replace section 68(2) with: (2) If a responsible authority receives a notice of conviction given under section 67(a), the authority must, as soon as is reasonably practicable, refer the notice to a professional conduct committee. (2A) If a responsible authority receives a notice of conviction given under section 67(b), the authority must, as soon as is reasonably practicable, refer the notice to a professional conduct committee if— (a) the conviction is for an offence punishable by imprisonment or a fine of or exceeding \$1,000; or (b) the authority otherwise considers that the conviction raises concerns about the appropriateness of the conduct or about the safety of the practice of the health practitioner. (3) In section 68(3), after “refer”, insert “the information and”.</p>	<p>Submission:</p> <p>Application of this section can cause unnecessary cost to the authority and distress to the practitioner. There is no discretion within the section that allows the authority any freedom to assess the type of conviction and the affect this may have on the practitioner’s professional practice or the standing/reputational impact of the profession. The direction within the amendment mandates the referral to a professional conduct committee (PCC). For example a drunk driving charge can fit the criteria for referral to a PCC. However, there is no step within the section that allows for any assessment. Having discretion may provide for an alternative route for assessment such as a health committee.</p> <p>PCC’s and ultimately HPDT’s can be expensive. The Board would suggest changing “the authority must” to “the authority may following assessment of the matter refer the notice to a PCC”.</p> <p>The Board would also note that it has never received a notice of conviction from a court registrar. A notice of conviction is reliant on the practitioner declaring they are a health practitioner. See submission under section 67 above.</p>

Section 69 amended (Interim suspension of practising certificate pending prosecution or investigation)

(1) Replace section 69(1) and (2) with:

(1) This section applies if a health practitioner is alleged to have engaged in conduct that is relevant to—

(a) a criminal proceeding that is pending against the practitioner; or

(b) an investigation about the practitioner that is pending under the Health and Disability Commissioner Act 1994 or under this Act.

(2) The responsible authority may order that—

(a) the practising certificate of the health practitioner be suspended if, in the opinion of the authority held on reasonable grounds, the conduct in which the practitioner is alleged to have engaged poses a risk of serious harm to the public; or

(b) 1 or more conditions be included in the health practitioner's scope of practice if, in the opinion of the authority held on reasonable grounds, the conduct in which the practitioner is alleged to have engaged casts doubt on the appropriateness of the practitioner's conduct in his or her professional capacity.

(2) Replace section 69(4)(a) with:

(a) the authority is satisfied that—

(i) the practitioner's conduct does not pose a risk of serious harm to the public, in the case of an order made under **subsection (2)(a)**; or

Submission:

The Board notes the replacement of this section includes a new test that of serious risk of harm to the public. In our experience serious risk of harm as a higher test threshold than what is in the current section; which is – that on reasonable grounds, casts doubt on the appropriateness of the practitioner's conduct in his or her professional capacity. This change would present an inconsistency in the Act. For example in section 35 there is a two-step process of risk of harm before considering serious risk of harm. The Responsible Authorities have provided advice on competence and assessment of risk of/serious risk of harm to the DHB's (Appendix 1 see page 10). Adding the test of serious risk of harm increases the complexity and speed of decision making for the Board.

What is missing at present is the ability of the Board to act swiftly when following an assessment of the information it has reasonable grounds to immediately suspend the practitioners practising certificate. In section 48 this provision is available and we would suggest should also be available within section 69.

A 20 day suspension period followed by an additional 20 days (section 48) would be something the Board would wish to see added to this amendment.

The Board has greater access to information about practitioner behaviour and preventing risk to patients. The Board believes that public expectations of practitioners' practice has been heightened and would support quick action.

To be clear the Board is asking for the ability to make a without notice suspension of the practitioner's practising certificate or to alter the practitioner's scope of practice by applying conditions. This would allow time for further investigations to take place. Power to undertake further investigations would also need to added to this section.

<p>(ii) the appropriateness of the practitioner’s conduct in his or her professional capacity is no longer in doubt, in the case of an order made under subsection (2)(b); or</p> <p>(3) Replace section 69(5) with:</p> <p>(5) An order made under subsection (2) or a revocation of an order under subsection (4) takes effect immediately and the Registrar of the authority must ensure that—</p> <p>(a) the following persons are notified as soon as practicable that the order or revocation has been made:</p> <p>(i) the health practitioner concerned; and</p> <p>(ii) any employer of the practitioner; and</p> <p>(iii) any person who works in partnership or association with the practitioner; and</p> <p>(b) all administrative steps are taken to give effect to the order or revocation.</p>	
<p>Section 71 Professional conduct committees</p>	<p>Submission:</p> <p>The Board would ask that consideration be given to adding a new provision into the legislation. The Board has been working on a Facilitated Resolution Policy which in some aspects mirrors the concept of restorative justice. The Board has attached at Appendix 2 a copy of its policy and would like the opportunity to provide a verbal submission to the Health Committee.</p>

	<p>Additionally the Board would wish to see that Facilitated Resolution Policy added to section 80, or an additional section and suggestions the addition of this provision.</p>
	<p>Section 73 (1) and (4) Committees may appoint legal advisors and investigators</p> <p>The Board recommends that this section 73(1) be amended to allow the authority to appoint a legal advisor. Often the PCC is not aware of the standing of a legal advisor. Having the authority appoint the legal advisor would also expedite the process.</p> <p>Section 73(4)</p> <p>The Board believes that the legal advisor for the PCC should be able to represent the PCC at the Tribunal. Having a different lawyer taking the case to the Tribunal is not necessary and prolongs the process and increases costs.</p> <p>The Board suggests section 73(4) be deleted.</p>
	<p>Section 80 – Recommendations and determinations of professional conduct committee</p> <p>Submissions:</p> <p>The Board believes that the term “counsel” needs clarification and should be defined in section 5 – Interpretation. It is presently unclear whether this refers to issuing a stern warning as to behaviour or to support through counselling.</p> <p>There is also no direction within the section as to the action to be taken should the practitioner not comply with the determination of the PCC. It would seem the only redress on non-compliance would be to establish another PCC.</p>

	<p>Section 82 – Settlement of compliant by conciliation</p> <p>Submission: Please see the Board’s submission to section 71 on Facilitated Resolution Policy. The Board believes that a facilitated resolution approach could be added to section 82.</p>
<p>New section 92A inserted (Chairperson may prohibit publication of names pending hearing of charge)</p> <p>After section 92, insert:</p> <p>92A Chairperson may prohibit publication of names pending hearing of charge</p> <p>(1) At any time after a notice has been given to a health practitioner under section 92(1), the parties to the proceedings may jointly apply to the chairperson of the Tribunal for an order prohibiting the publication of the name, or any particulars of the affairs, of—</p> <p>(a) the health practitioner; or</p> <p>(b) any other person; or</p> <p>(c) the health practitioner and any other person.</p> <p>(2) If, after having regard to the interests of any person (including, without limitation, the privacy of any complainant) and to the public interest, the chairperson of the Tribunal is satisfied that it is desirable to do so, the chairperson may make the order sought.</p>	<p>Submission:</p> <p>The Board is not clear why a joint submission would be required to prohibit the publication of the name or particulars of the case. It is difficult and cumbersome to see how the parties would agree. It would seem more appropriate that each party is given opportunity to make a submission. It then falls on the chairperson to make a decision.</p>

<p>(3) An order continues in force until whichever of the following occurs first:</p> <p>(a) the expiry of any period specified in the order:</p> <p>(b) the order is revoked by the chairperson of the Tribunal:</p> <p>(c) the charge against the health practitioner is heard by the Tribunal.</p> <p>(4) A person who contravenes an order without reasonable excuse commits an offence and is liable on conviction to a fine not exceeding \$10,000.</p>	
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Section 93 amended (Interim suspension of registration or imposition of restrictions on practice)

(1) Replace section 93(1) with:

(1) **Subsections (1A) and (1B)** apply at any time after a notice has been given to a health practitioner under section 92(1).

(1A) If, in the opinion of the Tribunal held on reasonable grounds, the conduct in which the health practitioner is alleged to have engaged poses a risk of serious harm to the public, the Tribunal may order that, until the charge to which the notice relates has been disposed of, the registration of the practitioner be suspended.

(1B) If the Tribunal is satisfied that it is necessary or desirable to do so, having regard to the need to protect the health or safety of members of the public, the Tribunal may order that, until the charge to which the notice relates has been disposed of, the health practitioner may practise as a health practitioner only in accordance with conditions stated in the order.

(2) Replace section 93(5) with:

(5) The appropriate executive officer of the Tribunal must ensure that a copy of the order is promptly given to—

(a) the health practitioner concerned; and

(b) the responsible authority; and

(c) any employer of the practitioner.

Submission:

The Board would suggest that all matters conduct within the Tribunal should be managed by the Tribunal. We therefore do not see the need for the amendment at 5(A) as this could become part of the order written by the Tribunal.

<p>(5A) If so directed, the responsible authority must ensure that a copy of the order is promptly given to any other persons specified by the Tribunal.</p>	
<p>Section 94 amended (Health practitioner may apply for revocation of order)</p> <p>(1) In section 94(1), replace "section 93(1)" with "section 93(1A) or (1B)".</p> <p>(2) In section 94(3)(b)(ii), replace "section 93(1)(b)" with "section 93(1B)".</p> <p>(3) In section 94(4), replace "section 93(1)" with "section 93(1A) or (1B)".</p>	<p>No submission</p>
<p>Section 95 amended (Hearings to be public unless Tribunal orders otherwise)</p> <p>In section 95(7), after "who", insert ", without reasonable excuse,".</p>	<p>Submission:</p> <p>The Board would suggest that provision in this section allows the Tribunal, with the consent of all parties to consider matters on the papers received. This would allow minor matters which have been agreed to by both parties to be expedited.</p>

<p>102 amended (Orders limiting restoration of registration)</p> <p>(1) Replace section 102(1) with:</p> <p>(1) When making an order that the registration of a health practitioner be cancelled, the Tribunal may do either or both of the following:</p> <p>(a) fix a date before which the person may not apply for registration again:</p> <p>(b) impose 1 or more conditions that the person must satisfy before the person may apply for registration again.</p> <p>(2) In section 102(2), after “conditions”, insert “imposed under subsection (1)(b)”.</p> <p>(3) In section 102(3), replace “under” with “of the kind specified in”.</p> <p>(4) After section 102(3), insert:</p> <p>(3A) If the Tribunal fixes a date before which the person may not apply for registration again, no application for registration may be made by the person before that date.</p>	<p>Submission:</p> <p>In the Board’s experience it would be helpful for this section to include the ability for the lawyer representing the PCC at the HPDT to discuss any proposed conditions with the responsible authority. This would provide an opportunity to the responsible authority to judge how the condition would work in practice.</p>
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<p>Section 103 amended (Orders of Tribunal)</p> <p>After section 103(2), insert:</p> <p>(2A) If the Tribunal makes any 1 or more of the orders authorised by section 101(1)(a) to (d) against a health practitioner who is an employee, the appropriate executive officer must, if so directed by the Tribunal, ensure that a copy of each order is given to the health practitioner’s employer.</p>	<p>Submission:</p> <p>Given the changes to postal delivery the Board requests that a change be made to 103(3) allow for electronic (email) communications.</p>
<p>New section 103A inserted (Resourcing Tribunal’s administration costs)</p> <p>Before section 104, insert:</p> <p>103A Resourcing Tribunal’s administration costs</p> <p>(1) The responsible authorities must pay the Tribunal’s general administration costs.</p> <p>(2) Each responsible authority must pay to the Tribunal at the beginning of each financial year a proportion of the Tribunal’s estimated general administration costs for that financial year, with the proportion being determined—</p> <p>(a) by the Tribunal; and</p> <p>(b) by reference to the number of health practitioners registered with the authority at the beginning of the financial year.</p> <p>(3) If the Tribunal’s estimated general administration costs for any financial year exceed the Tribunal’s actual general administration costs for that year, the Tribunal must—</p>	<p>Submission:</p> <p>The Board believes that this section needs refining and clarifying.</p> <p>There is often a great difference between the number of practitioners on the register and those with a current practising certificate. For example the Board has approximately 2,700 practitioners with practising certificates on the register, with a further 800 on the register without a practising certificate. They remain on the register through choice and pay a non-practising fee. We use section 144 annually to keep the register current. Paying Tribunal administration costs by registered practitioners would not be an appropriate formula for attributing costs.</p> <p>It is not clear from the 103A (6) what is meant by general administration costs. For example does this include Tribunal staff costs, facility and utility costs? It would be helpful to have clarity so the Board could make budgetary provision.</p> <p>There is no mention of costs being attributed to the Health and Disability Commissioner’s (HDC) office, given the Director of Proceeding can lay charges before the Tribunal (91(1)(a)). We would suggest that whatever formula is used for the responsible authorities should also apply to the HDC.</p>

<p>(a) refund to the authorities, on a proportional basis, the amount of the excess; and</p> <p>(b) determine the proportion payable to each authority by reference to the amount paid by the authority toward the estimated costs.</p> <p>(4) If the Tribunal’s estimated general administration costs for any financial year are less than the Tribunal’s actual general administration costs for that year, the Tribunal may at any time (whether or not the year has ended)—</p> <p>(a) require the authorities to pay, on a proportional basis, the shortfall in costs; and</p> <p>(b) determine the proportion payable by each authority by reference to the amount paid by the authority toward the estimated costs.</p> <p>(5) The Tribunal must provide to each responsible authority at the end of each financial year a statement showing a full breakdown of its general administration costs for that financial year.</p> <p>(6) In this section, general administration costs means all expenses payable by or on behalf of the Tribunal in connection with the administration of the Tribunal that are not payable in respect of any proceeding under section 104(1)(a) or (b) (including, without limitation, insurance costs and member training costs).</p>	<p>The Board believes that pre-payment for Tribunal administration costs should be made transparent to practitioners and therefore fall within a requirement to identify the component cost of Tribunal fees in the practising certificate fee.</p> <p>The Board believes that this amendment should also reference section 131(1)(b) which makes reference to the responsible authority imposing a disciplinary levy by notice in the Gazette for costs arising out of proceedings of the Tribunal.</p> <p>The Board suggest that historical costs be used to determine costs to each responsible authority. If the average number of cases heard by the Tribunal (for each) over the course of its inception is used for each authority this would provide a more realistic indicator of prospective costs annually. So, for example, if the Medical Council use the Tribunal 30% of its time then they should pay 30% of the general administration costs.</p>
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<p>Section 104 amended (Resourcing of Tribunal and nomination of executive officers)</p> <p>(1) Replace the heading to section 104 with “Resourcing costs of proceedings and nomination of executive officers”.</p> <p>(2) In section 104(1)(c), after “Tribunal”, insert “for the purpose of the proceeding”.</p>	<p>No submission</p>
<p>New section 104A inserted (Recovery of costs, fees, and expenses)</p> <p>After section 104, insert:</p> <p>104A Recovery of costs, fees, and expenses</p> <p>The following are recoverable in any court of competent jurisdiction by the Tribunal from an authority as a debt due to the Tribunal:</p> <p>(a) all costs payable by an authority under section 103A; and</p> <p>(b) all fees and expenses payable by an authority under section 104(1)(a) and (b).</p>	<p>No submission</p>
<p>Section 105 amended (Recovery of fines and costs)</p> <p>Replace the heading to section 105 with “Recovery of costs and expenses of Health and Disability Commissioner or Director of Proceedings”.</p>	<p>No submission</p>

New sections 116A to 116D and cross-heading inserted

After section 116, insert:

Amalgamation of authorities

116A Authorities may be amalgamated

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—

(a) amalgamate an existing authority with 1 or more other existing authorities; and

(b) either—

(i) continue the existing authorities as one of the existing authorities; or

(ii) continue the existing authorities as a new authority; and

(c) provide for any arrangement to complete the amalgamation and provide for the subsequent management and operation of the amalgamated authority; and

(d) amend any enactment (for example, this Act) to reflect and give effect to the amalgamation effected by the order.

(2) The Minister may recommend that an Order in Council be made only if—

(a) the Minister has consulted the authorities concerned; and

Submission:

The Board is in agreement that any amalgamation should have public protection, efficiencies and effectiveness at the heart of the decision. How the decision is made needs further clarity.

The Board believes that new authorities (professions) may be added to existing authorities. However, more consideration needs to be given to which authority would be the “best fit”. For example, adding professions which are allied health to another allied health profession would be a better fit than say adding to one of the major professions like medicine or nursing, whose practitioners are predominantly in large institutions. Smaller professions tend to work in private practice and as such have a different approach to professional practice, and different practice issues.

The test identified in 2(b) “in the public interest” is too open to interpretation. It would be helpful to know what elements would constitute public interest in this case.

Early consultation would need to take place with the profession which gives clarity to the rationale for any proposed amalgamations. Information will need to be provided on how the unbundling of (practitioner) money belonging to each authority would be managed. Transparency around cross subsidisation would also need careful consideration.

Authorities have been advised that financial reserves can only be kept for clearly defined purposes. And that reserves for operational wind up would not be required as this was considered not to be a risk factor. If this amendment is passed authorities may will need to review their reserves policy. A number of authorities have invested heavily in bespoke IT infrastructure, any amalgamation and transition costs would have a significant impact on authorities.

<p>(b) the Minister is satisfied that it is in the public interest that the order be made.</p> <p>(3) An Order in Council is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.</p> <p>116B Effect of amalgamation</p> <p>On the date on which existing authorities amalgamate,—</p> <p>(a) the amalgamated authority succeeds to all the property, rights, powers, and privileges of each of the amalgamating authorities; and</p> <p>(b) the amalgamated authority succeeds to all the liabilities and obligations of each of the amalgamating authorities; and</p> <p>(c) proceedings pending by, or against, an amalgamating authority may be continued by, or against, the amalgamated authority; and</p> <p>(d) a conviction, ruling, order, or judgment in favour of, or against, an amalgamating authority may be enforced by, or against, the amalgamated authority.</p> <p>116C Final report of authority</p> <p>(1) As soon as practicable after an authority (A) has been amalgamated under section 116A, the amalgamated authority must prepare and forward to the Minister a final report on A’s operations.</p> <p>(2) The final report must be for the period (the report period)—</p>	<p>In respect of 116D further clarification on the term member would be helpful.</p>
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(a) commencing at the start of the financial year in which A was amalgamated; and

(b) ending with the close of the day immediately preceding the date on which A was amalgamated.

(3) The final report must include audited financial statements for the report period.

(4) The Minister must present a copy of the final report to the House of Representatives within 16 sitting days after receiving it.

(5) In this section, **financial year** has the same meaning as in section 134.

116D Members not entitled to compensation for loss of office

No member of an authority is entitled to any compensation for loss of office resulting from an Order in Council made under **section 116A**.

<p>Section 118 amended (Functions of authorities)</p> <p>(1) Replace section 118(f) with:</p> <p>(f) to receive information from any person about the practice, conduct, or competence of health practitioners and, if it is appropriate to do so, act on that information:</p> <p>(2) After section 118(j), insert:</p> <p>(j) to promote and facilitate inter-disciplinary collaboration and co-operation in the delivery of health services:</p>	<p>Submission:</p> <p>The Board supports the addition of 118(f). However, we note that receiving information about a practitioner’s health condition is not included. The ability to “act on the information” needs further clarity within this section or further reference be made to other sections of the Act allowing such action. The responsible authorities have no clear direction in the Act to investigate matters themselves. Usually investigatory work is carried out by, for example a PCC. This is an involved and potentially costly process.</p> <p>The Board would suggest two caveat to this amendment:</p> <ol style="list-style-type: none"> 1. That the person providing information about the practice of a practitioner are free from punitive action unless they have acted in bad faith. 2. That the authority, following careful and reasonable consideration of the information’s declines to proceed as it consider the information to be vexatious or without sufficient evidence. <p>Amendment (j)</p> <p>The Board welcomes this additional function and considers that it supports the government’s health strategy – one team. The Board see this amendment as an opportunity for responsible authorities to work collectively on the development of shared competencies for practice and a single code of ethics covering all health professions.</p>
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New section 122A and cross-heading inserted

After section 122, insert:

Performance reviews of authorities

122A Performance reviews

(1) From time to time, there must be conducted in respect of each authority a review of how effectively and efficiently the authority is performing its functions (a **performance review**).

(2) The first performance review must be conducted within 3 years after the commencement of this section.

(3) Subsequent performance reviews must be conducted at intervals that are no more than 5 years apart.

(4) For each performance review to be conducted in respect of an authority, the Ministry of Health must, in consultation with the authority,—

(a) appoint an independent person to conduct the review (a **reviewer**); and

(b) set the terms of reference for the review.

(5) A reviewer must, as soon as practicable after conducting a review,—

(a) prepare a written report on the conclusions reached and of any recommendations; and

(b) give a copy of the report to—

Submission:

The Board welcomes the inclusion of this amendment but requests that further clarity is needed around the following points:

- An early indication of when the review would take place so that budgetary provision can be made.
- Whether the review is undertaken by an external body with expertise in this area.
- That the reviews undertaken are consistent across the authorities so benchmarking and improvements can be shared.
- Advanced notice of the areas to be reviewed.
- Identified terms of reference and assessment criteria set be the Ministry following a full consultation process with the authorities.
- That reviews consider international research and best practice.

<p>(i) the Minister; and</p> <p>(ii) the authority.</p> <p>(6) On receipt of a report under subsection (5)(b)(ii), an authority must, as soon as practicable, publish the report on its Internet site.</p> <p>(7) The costs of conducting a performance review in respect of an authority must be met by the authority.</p>	
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<p>New section 134A and cross-heading inserted</p> <p>After section 134, insert:</p> <p style="text-align: center;"><i>Information about health practitioners</i></p> <p>134A Authority to provide to Director-General of Health information about health practitioners</p> <p>(1) Each authority must provide to the Director-General of Health (the Director-General) information held by the authority that—</p> <p>(a) relates to health practitioners who are registered with the authority and who hold current practising certificates; and</p> <p>(b) is of a kind specified for the purpose of this section by the Director-General after consultation with the authority (including, without limitation, a health practitioner’s name, date of birth, employer, place or places of work, and the average weekly number of hours worked by the health practitioner at each place of work).</p> <p>(2) The Director-General may use the information only for the purpose of supporting the Ministry of Health’s responsibilities for workplace planning and development.</p> <p>(3) The information must be provided—</p> <p>(a) annually, on a date set by the Director-General after consultation with the authority; and</p> <p>(b) in a form or manner set by the Director-General.</p>	<p>Submission:</p> <p>The Board understands and supports the need to have contemporaneous workforce data. The authorities are in the best position to provide such information. The Board sees the collection of such data as supporting the purpose of the Act – to protect the health and safety of members of the public. Having workforce data goes to the heart of good and adequate health service provision.</p> <p>The Board would suggest that workforce data be collected at the time of recertification (March-April).</p> <p>The Board believes that more flexibility be added to the type of information required than currently identified at (b).</p>
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<p>(4) Information that is provided to the Director-General under this section and that is not publicly available must not be published or disclosed by the Director-General in a manner that—</p> <p>(a) identifies any health practitioner to whom the information relates; or</p> <p>(b) could reasonably be expected to identify any health practitioner to whom the information relates.</p> <p>(5) This section overrides provisions in contracts, deeds, documents, and other enactments that are inconsistent with this section.</p>	
	<p>Section 144 – Revision of register</p> <p>Submission:</p> <p>The processes outlined in this section are time consuming and unwieldy. The process could be streamlined by allowing electronic (email) communication to take place. This would considerably speed up the process and reduce postage costs.</p>

<p>New sections 157A to 157I inserted</p> <p>After section 157, insert:</p> <p>157A Meaning of naming policy</p> <p>In sections 157B to 157I, naming policy means a policy issued by an authority relating to the naming of a health practitioner in a notice published by the authority under section 157(1).</p> <p>157B Authorities to issue naming policies</p> <p>(1) Each authority must issue a naming policy not later than 12 months after this section comes into force.</p> <p>(2) The purpose of the naming policy is to—</p> <p>(a) enhance public confidence in the health professions for which the authority is responsible and their disciplinary procedures by providing transparency about their decision-making processes; and</p> <p>(b) ensure that health practitioners whose conduct has not met expected standards may be named where it is in the public interest to do so; and</p> <p>(c) improve the safety and quality of health care.</p> <p>(3) A naming policy must set out—</p> <p>(a) the class or classes of health practitioners in respect of whom the naming policy applies; and</p> <p>(b) the circumstances in which a health practitioner may be named; and</p>	<p>No submission:</p>
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(c) the general principles that will guide the authority's naming decisions; and

(d) the criteria that the authority must apply when making a naming decision; and

(e) the requirement to have regard to the consequences for the health practitioner of being named, including the likely harm to the health practitioner's reputation; and

(f) the procedures that the authority must follow when making a naming decision; and

(g) the information the authority may disclose when naming a health practitioner; and

(h) the means by which a health practitioner may be named.

157C Consultation on naming policies

Before issuing its naming policy, an authority must consult, and take into account any comments received from, the following persons:

(a) the health practitioners registered with the authority; and

(b) the Privacy Commissioner; and

(c) the Director-General of Health; and

(d) the Health and Disability Commissioner.

157D Naming policies to be available on Internet

Immediately after issuing a naming policy, an authority must make its naming policy available on an Internet site maintained by or on behalf of the authority.

157E When naming policies come into force

A naming policy comes into force on the day after the date on which it is issued.

157F Review of naming policies

(1) An authority must review its naming policy within 3 years after the policy comes into force, and then at intervals of not more than 3 years.

(2) **Sections 157B to 157E** apply with all necessary modifications to the review of a naming policy.

157G Naming policies to be consistent with law

A naming policy must be consistent with—

(a) this Act; and

(b) the information privacy principles in section 6 of the Privacy Act 1993; and

(c) the general law (including natural justice rights).

157H Status of naming policies

A naming policy is—

<p>(a) not—</p> <p>(i) a legislative instrument for the purposes of the Legislation Act 2012; or</p> <p>(ii) a disallowable instrument for the purposes of the Legislation Act 2012; and</p> <p>(b) not required to be presented to the House of Representatives under section 41 of the Legislation Act 2012.</p> <p>157I Authority naming health practitioner in accordance with naming policy protected by qualified privilege</p> <p>For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any notice published by an authority under section 157(1) that names a health practitioner in accordance with a naming policy issued by the authority must be treated as an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.</p>	
<p>Section 170 amended (Regulations)</p> <p>After section 170(c), insert:</p> <p>(ca) declaring the responsible authorities appointed by or under this Act and specifying the health professions in respect of which each of those authorities is appointed:</p>	<p>No submission</p>

Part 2 Further amendments to principal Act	
<p>New Schedule 1AA inserted</p> <p>Insert the Schedule 1AA set out in the Schedule of this Act as the first Schedule to appear after the last section of the principal Act.</p>	
<p>Schedule 1 amended</p> <p>In Schedule 1, clause 6(5), replace "Evidence Act 1908" with "Evidence Act 2006".</p>	No submission:
<p>Schedule 3 amended</p> <p>In Schedule 3, replace clause 17(1) with:</p> <p>(1) An authority may from time to time, by written notice, delegate any of its functions, duties, or powers to a committee appointed under clause 16 or to its Registrar.</p> <p>(1A) However, an authority may not delegate—</p> <p>(a) any power under section 69 to a committee appointed under clause 16:</p> <p>(b) any power under section 69 or 71 to its Registrar.</p>	No submission: