

Committee: Health Committee

From: The Psychotherapists Board of Aotearoa New Zealand (Board)
Registrar: Jacquelyn Manley
Date: Wednesday 4th April 2018
Submission: The Board would like an opportunity to speak to this submission

Introduction

Thank you for the opportunity to comment on the Health Practitioners Competence Assurance Amendment Bill (Amendment Bill).

In providing this submission the Psychotherapists Board of Aotearoa New Zealand (the Board) acknowledges that health Responsible Authorities (RA's) provided an extensive submission to the review of Health Practitioners Competence Assurance Act 2003 (HPCAA) in 2009 and 2012. Those submissions highlighted technical suggestions aimed at improving the efficiency and operation of the act; the Board¹ supported those submissions.

Please find following the Board's 2018 submission, listed in numerical order:

1. Section 34(1)(2) - Notification that practice below required standard of competence

Current wording

*'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'.*

The Board suggests that the word 'may' be replaced by the word 'must' as having a mandatory requirement to make a notification is a matter of public and practitioner safety.

2. Section 36 – When authority may review health practitioner's competence

New inclusion

'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'.

The Board supports this amendment, however, as it specifically names those who may be notified, it potentially restricts the Board from notifying someone that may have been affected by the health care but did not make the actual notification.

3. Section 38 – Orders concerning competence

New inclusion

'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

¹ past and current members

received that an order under subsection (1)(a), (b), (c), or (d), as the case may be, has been made.

The Board supports further transparency (information sharing).

4. Section 49 – Power to order examination or testing

Current wording

'... to submit himself or herself for examination or testing by a 'medical practitioner' at the expense of the authority.

The Board supports the change from 'medical practitioner' to 'assessor'.

5. Section 67- Notification of convictions

The Board notes that RA's rarely receive notices of convictions from the courts although this requirement is clear.

6. Section 68- Referral of complaints and notices of conviction to professional conduct committee

The Board believes some discretion within this section is appropriate.

The enforced application of this section can cause unnecessary cost to the authority and distress to a practitioner as there is no latitude to assess the type of conviction and the effect this may have on the practitioner's professional practice or the standing/reputational impact of the profession. For example: a first-time offence drunk driving charge fits the criteria for referral to a Professional Conduct Committee.

7. Section 69 – Interim suspension of practising certificate pending prosecution or investigation

Current wording

'... in the opinion of the responsible authority held on reasonable grounds, casts doubt on the appropriateness of the practitioner's conduct in his or her professional capacity'.

The Board notes that the revised wording in this section incorporates a higher threshold for the interim suspension of a health practitioner - 'the conduct in which the practitioner is alleged to have engaged poses a risk of serious harm to the public'.

The current test is at a lower threshold - 'casts doubt on the appropriateness of the practitioner's conduct in his or her professional capacity'.

Adding a risk of harm component adds an additional level of complexity before suspension can be considered; this potentially puts members of the public at risk while Board processes are undertaken.

8. Section 103A – Resourcing Tribunal's administration costs

New inclusion:

'(1) The responsible authorities must pay the Tribunal's general administration costs.'

(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—

(a) by the Tribunal; and

(b) by reference to the number of health practitioners registered with the authority at the beginning of the financial year.

(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—

(a) refund to the authorities, on a proportional basis, the amount of the excess; and

(b) determine the proportion payable to each authority by reference to the amount paid by the authority toward the estimated costs.

(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)—

(a) require the authorities to pay, on a proportional basis, the shortfall in costs; and

(b) determine the proportion payable by each authority by reference to the amount paid by the authority toward the estimated costs.

(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.

*(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)'.*

The Board asks for further consideration and clarification.

It is not clear from 103A (6) what is meant by general administration costs. For example, does this include Tribunal staff costs, facilities and utility costs? And if so, what are the anticipated costs? It would be helpful to have more information so that RA's can consider a budgetary provision.

The Board would also like to note that in the ten years that psychotherapists have been regulated a psychotherapist has not yet been referred to the Health Practitioners Disciplinary Tribunal (Tribunal). This means that as the Board has had little exposure to the Tribunal that any costs it is asked to pay will in effect be cross-subsidising other professions.

The Board asks that a fair, transparent formula is used to cover HPDT administration costs. The Board suggests using historical costs to determine the proportion of HPDT administration costs to be paid by each authority.

9. Section 116A - Authorities may be amalgamated

New inclusion:

'(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
(b) the Minister is satisfied that it is in the public interest that the order be made.
(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’.

The Board asks for further consideration and clarification.

The Board understands and appreciates the need to improve operational efficiencies. To support this the Board is part of a group of RAs’ who have collocated. However, the Board requests that further consideration be given to:

- The test to amalgamate, which is ‘in the public interest’. This is open to interpretation, it is vital for the Amendment Bill to state what elements would constitute public interest;
- Potential amalgamation costs and whether the Minister is required to have regard to these;
- Early consultation with potentially affected professions prior to any amalgamation discussion;
- Professional culture of the professions being considered for amalgamation;
- What an amalgamated governing Board might look like and how would professions be represented;
- Impact on profession-specific scopes of practice.

The Board is concerned that potential amalgamation would increase the cost of regulation for psychotherapists.

10. Section 118(j) – Promote and facilitate inter-disciplinary collaboration and co-operation in delivery of health services

New inclusion:

‘To promote and facilitate inter-disciplinary collaboration and co-operation in the delivery of health services’.

The Board asks for further clarification.

The Board is unclear what the intention or scope of this function is. An assumption has been made that it refers to supporting the Government’s Health Strategy i.e. working as one team, developing and sharing competencies?

11. Section 122A – Performance Reviews

New inclusion:

- '(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—*
- (i) the Minister; and*
- (ii) the authority.*
- (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.*
- (7) The costs of conducting a performance review in respect of an authority must be met by the authority'.*

The Board asks for further consideration and clarification specifically related to process and cost.

The Board supports accountability and transparency but would like to understand what the review hopes to achieve and what costs implications this may have for health practitioners. It would be helpful for RA's to have:

- An indication of what a review would entail so that budgetary provisions can be made;
- Advanced notice of the areas to be reviewed so that RA's can address resourcing;
- Whether the review is undertaken by an external body with expertise in this area;
- Identified terms of reference and assessment criteria set by the Ministry following consultation with the authorities.

The Board is concerned that a performance review process could increase the cost of regulation for psychotherapists.

12. Section 134A - Authority to provide to Director-General of Health information about health practitioners

New Inclusion:

- '134A Authority to provide to Director-General of Health information about health practitioners*
- (1) Each authority must provide to the Director-General of Health (the Director-General) information held by the authority that—*
- (a) relates to health practitioners who are registered with the authority and who hold current practising certificates; and*
- (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).

(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.

(3) The information must be provided—

(a) annually, on a date set by the Director-General after consultation with the authority; and

(b) in a form or manner set by the Director-General.

(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—

(a) identifies any health practitioner to whom the information relates; or

(b) could reasonably be expected to identify any health practitioner to whom the information relates.

(5) This section overrides provisions in contracts, deeds, documents, and other enactments that are inconsistent with this section'.

The Board understands and appreciates the need to collect workforce data. However, the Board does not think collection of workforce data should be linked to the HPCAA which is a competence assurance act. Currently the HPCAA provides no grounds in which to compel psychotherapists to provide Workforce data.

The Board also notes the wording 'without limitation' in the draft Bill means that the Minister's scope and request for information can change. Each change will affect IT systems, financial costs and potentially the relationship that RA's have with registrants and professional associations/bodies.

The Board is concerned the collection of workforce data could increase the cost of regulation for psychotherapists.

13. Section 144 – Revision of Register

The Board suggests that the section 144 requirement to post hard copies and await a response be amended to allow for electronic means of contact (which is less costly and time-consuming). The Board also proposes that the timeframe to await a response be reduced from six months to three months.

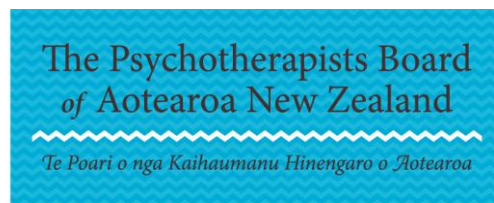
The Board suggests that to modernise and improve cost effectiveness of the HPCAA that sections which require correspondence in hard-copy be amended to allow for communication to occur electronically.

14. Schedule 3 clause 17 – Delegations by authorities

The Board supports the ability to delegate its power under section 71 (Professional Conduct Committees) to a Committee or to its Registrar.

15. Te Tiriti o Waitangi/The Treaty of Waitangi

The Board notes the Ministry's rationale for not specifically mentioning Te Treaty o Waitangi/The Treaty of Waitangi in the HPCAA. However, the Board is of the view that Te Tiriti o Waitangi/The Treaty of Waitangi should be referenced within the HPCAA and that this would be a step towards implementing better health outcomes for Māori.



16. The term 'registered'

It is widely known that professional bodies/associations who self-regulate commonly use the term 'membership'.

The term 'registered' is commonly used to describe a regulated profession.

The Board would like to bring it to the Health Committee's attention that the term 'registered' is also being used by self-regulated professions. The Board is concerned that the use of 'registered' by self-regulated professions is confusing and misleading for members of the public.

Closing remarks

Thank you again for the opportunity to make a submission.

The Board supports the improvements to transparency within the Amendment Bill. Finally, the Board requests that the Health Committee consider financial implications and the impact that some amendments may bring, especially to smaller regulated professions.

Kind regards

Jacquelyn Manley
Registrar
Psychotherapists Board of Aotearoa New Zealand
Te Poari o nga Kaihaumanu Hinengaro o Aotearoa