

**Comments on the HPCA Act Review  
from Occupational Therapists in Counties Manukau District Health Board.**

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

*We believe so.*

2. What evidence supports your answer?

*We are now able to report (and have done so) and have action taken against a health practitioner who was unfit to practice as an occupational therapist. Previously, we would have had to have a "named" client and a specific incident in order to report her to the OTBNZ. The HPCA Act allowed us to also report "unfitness" to practice based on clear evidence from a range of health practitioners who practised alongside her.*

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.

*We would like to see Registration Authorities giving employers information on a need to know basis (consistent with the Privacy Act) when a health practitioner is under investigation, and or has a restriction on his/her annual practicing certificate. Currently the OTBNZ does not give this information to employers who are doing background checks on job applicants. We have had some negative experiences where we have appointed a person to a position pending their APC being granted, but couldn't get information from the OTBNZ as to the status of the APC even after several weeks of asking for it.*

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)?

*This has not been an issue for us.*

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

*No comment*

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?

*No comment*

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 support the intention of the Act to facilitate building competence. The shortage of Health Practitioners, the cost of training, different times taken to develop competence, and different levels of support for continuing or maintaining competence are reasons for taking this position.*

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

*We believe so.*

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?

*The OTBNZ has "new graduate", and "return to practice/overseas registered" conditions of practice. We support this, as it gives consistency of expectations around supervision, learning and monitoring of competence across NZ.*

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

*Before the Act came into force, occupational therapists around the country had opportunities to contribute to the defining of our scope of practice. At this stage, there is not discussion around changing the scope of practice.*

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.

*The qualification required to become an occupational therapist is just right (Bachelor degree for entry level, with opportunities for post-graduate study).*

*The qualification is appropriate for:*

- a. assessing occupational performance (i.e. what a person can do, what they can't do in their daily lives);*
- b. identifying the real reasons (physical, cognitive, social, emotional) that impair performance of everyday activities/occupations;*
- c. setting occupational goals (i.e. what does the person want or need to do within their everyday lives, and for their future);*
- d. deciding on appropriate action/intervention to achieve the above goals;*

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)?

*In occupational therapy, the recertification process fits very neatly with Counties Manukau DHB's annual performance review and credentialling processes. This means that occupational therapists can work from one set of performance and learning objectives, and this one set of objectives can meet the needs of recertification, credentialling and annual performance review.*

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

*At this stage, the OTBNZ asks occupational therapists to write at least one objective for each of the seven competencies for practice as an occupational therapist. These are recorded on a specific OTBNZ website for each therapist. We are expected to critically analyse our achievements in each of these objectives. The OTBNZ is interested in our ability to be reflective and thoughtful practitioners. This method suits wordsmiths. An improvement in the evidence could be on how we have applied the thoughtfulness and reflection in practice. Evidence could be variable and appropriate to the objective e.g. written reflection, feedback from clients, confirmation by a colleague, examples of material etc.*

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)?

*We would like to see the registration authorities being required to share (on a need to know basis) the status of a practitioner's APC, restrictions, current complaints/investigations. Presently, it is up to the honesty of the health practitioner as to how much is disclosed at interview and following appointment.*

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

*No comment*

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

*Gain: trust that all health practitioners (registered and those with bachelor degree level training which makes them eligible to practice their discipline) have a national standard of certification that they must adhere to each year.*

*Problems: we don't see any problems that are not already part of annual performance review processes and opening one's practice to professional scrutiny.*

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?

*Our experience with the OTBNZ has been that communication from the Board is restricted to the individual therapist only. Written permission to the Board from the therapist is required for each piece of information that is shared with the employer. This can work where the therapist is cooperative. We have had an experience where the therapist was not cooperative, and we could not get any information from the OTBNZ about the therapist's APC and if there were any restrictions, or the progress towards the granting of an APC. When we did send a complaint to the Board about one therapist, we received no further information from the Board until we specifically requested it several months after action had been taken with that therapist.*

*We want communication with employers on a need to know basis, about what is happening about granting APCs to overseas and returning to practice therapists, and about complaints that we make to the Board.*

*For communication with the employer to be effective, employers will need to notify the registration authority of who is the nominated point of contact for that profession.*

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

*Our opinions are divided on this question: overkill versus right and proper if those agencies are purchasing contracts where that person is employed. What benefits are there in notifying them all? What do they do with the information? Does it stop them arranging contracts in any way? How else could these agencies get this information if they need it.*

*It seems very odd to us, that the registration authority is required to notify these agencies, but does not share this information with that person's employer.*

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?

*When that practitioner brings the profession into disrepute because of incompetence, or generalised poor practice that has not responded to performance improvement programmes etc.*

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?

*We use our DHB's performance management systems to improve performance in the first instance. When this does not have the desired effect, I then notify the OTBNZ. When to notify the Board that a therapist is struggling is a difficult decision to make.*

*On the occasions (3) that I have reported to OTBNZ that a therapist is struggling with their competence, the Board has been consistent in asking for 3 monthly reports on the therapist's progress on the performance improvement plan. I have no problem with their support of me when I have indicated to them that I am working with a struggling therapist.*

*Occupational therapists have the mandate to recommend specialised equipment and housing modifications to assist independent living at home. These modifications and equipment are funded by the Government, and the total amount is millions of dollars annually. Therefore it is important that the competence of occupational therapists to do this well is important for spending taxpayers money wisely.*

*When I have made a complaint to the OTBNZ, I have measured the therapist's competence and behaviour against the OTBNZ's Competencies for Registration as an Occupational Therapist in NZ, the OTBNZ's Code of Ethics, CMDHB's Code of Conduct, NZAOT's Occupational Therapy Process Standards.*

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

*In our opinion, it is working, as it gives the competent practitioner a course of action to take when they are concerned. See question 20 for further details.*

*We like the requirement of reporting practitioners who resign from the workplace while their practice is being investigated. This prevents them from being able to go from one employer to another without having to do something about their standard of practice. However, this will only work if potential employers can access the right information from the registration authority during the recruitment process, and not have to rely on the honesty of the applicants.*

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.

*When a complaint is made about a practitioner, natural justice must apply, and there needs to be the presumption of innocence until proven guilty. We need to guard against one being considered guilty because he/she has merely been accused.*

*As long as performance improvement processes are in place, the practitioner is not being disadvantaged. An enormous amount of time can be spent (2-3 hours per week and then some) on helping a practitioner to improve his/her*

*practice. If this work doesn't produce the desired result of improving practice, then the risk of harm to the public becomes the over-riding consideration.*

*There is some concern for practitioners in those work areas where there are not good performance management processes in place. This disadvantages both the public and practitioners.*

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

*See question # 12.*

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?

*Where the practitioner is employed by a company that has good performance management processes, the practitioner's mental or physical fitness to practice should be dealt with in-house. The worry is for those practitioners who work in companies where the performance management systems are lacking.*

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

*See question # 22.*

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.

*There are none that apply to occupational therapy in CMDHB.*

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

*We are not aware of any.*

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?

*As far as we are aware, the possibility of having our APC jeopardised in any way, is deterrent factor in itself.*

*The time delay in stopping a practitioner from practising means that they are still able to pose a risk to the public in the meanwhile. So in this respect, it does not seem to be effective.*

*Having an APC suspended, or the practitioner being deregistered does not stop that person from working with the public under another occupational title (e.g. community support worker) where regulation does even less to protect the public.*

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

*Has there been more than one complaint about this practitioner? Over what period of time? Were these complaints upheld?*

*What is the seriousness of the complaint/s?*

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?

*Unable to comment.*

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)?

*Unable to comment.*

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?

*Unable to comment.*

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)?

*Unable to comment.*

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

*Unable to comment.*

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?

*If combining registration authorities results in decreased costs of registration and APC, increase effectiveness and consistency of how the Act is applied, then we agree with combining the registration authorities.*

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

*Unable to comment.*

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?

*We recommend that democratic principles should apply, and that electing members to registration authorities should happen. Appointing members to these boards does not guarantee that they have the necessary skills, knowledge and attitudes to do the job well either.*

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

*Registration authorities need to also relate to their discipline's respective domestic and international professional associations/societies.*

*We have no further comments to make. Thank you for the opportunity to comment on this review.*

*Marie Chester  
Professional Leader for Occupational Therapy (Physical)  
Counties Manukau District Health Board  
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