

**New Professions under the
Health Practitioners Competence Assurance Act 2003
Criteria for assessing applications for inclusion in the Act**

Section 1 - Introduction

At the time of its enactment, the Health Practitioners Competence Assurance (HPCA) Act 2003 applied to 15 registration authorities. At the same time, the Act contained provisions enabling the scope of the Act to be extended to cover other practitioners and professions that provide health services. This document discusses these provisions and provides guidance to groups who might seek to apply for inclusion in the Act.

Section 115 of the HPCA Act

Section 115 of the HPCA Act enables the Governor-General, on the advice of the Minister of Health, to designate health services of a particular kind as a health profession under the HPCA Act and to either:

- Establish a registration authority to administer the registration of the profession; or
- Provide that the designated profession be added to the profession or professions in respect of which an existing authority is appointed – thus creating a “blended authority”.

The HPCA Act does not provide for new or blended authorities to receive Crown funding. The set up and operational costs of the new authority will need to be borne by registrants. The financial viability of any proposed authority may have a bearing on the decision as to which of the section 115 options is the better mechanism. Applicants may be asked to provide comment on this issue.

Section 2 - Purpose of Act paramount

Essentially, any application to come within the Act must show consistency with the purpose of the HPCA Act; the principal purpose of which is *to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions* (s 3(1)).

Implicit in the Act is the protection of the public interest through ensuring that the public can readily find out what services a health practitioner is competent and entitled to provide. This will enable the public to know what health services can be expected from their chosen practitioner, and to know that that practitioner is competent and safe. The concept of providing the public with clear information on the nature of a profession, and the scope of practice and competencies of its practitioners, is reflected in the requirements set out below.

The development of these steps is also guided by the policy framework for regulating occupations. The framework (Cabinet Office Circular No (99) 6) includes that

1. Intervention by the government in occupations should generally be used only when there is a problem or potential problem that is either unlikely to be solved in any other way or inefficient or ineffective to solve any other way.
2. The amount of intervention should be the minimum to solve the problem.
3. The benefits of intervening must exceed the costs.

The following process and evidence requirements under the HPCA Act help ensure compliance with this framework.

Section 116 of the HPCA Act

Section 116 of the HPCA Act requires that, before recommending a health service be regulated as a health profession, the Minister be satisfied that the health services **pose a risk of harm to the public** or that it is in the **public interest** that the health service be regulated.

The Minister must also be satisfied that the providers of health services are generally agreed on the

1. Qualifications for any class of providers of those health services;
2. Standards that any class of service providers are expected to meet; and
3. The competencies for scopes of practice for those health services.

Section 116 of the HPCA Act also requires that the Minister of Health consult with any organisation that, in the Minister's opinion, has an interest in the recommendations. The relevant text of section 116 is contained in the Appendix.

Section 3 - Process for satisfying these requirements

Evidence of need to regulate

Applications must establish the following elements:

- 1) Application relates to the provision of a health service as defined by the HPCA Act.
That is: *“a service provided for the purpose of assessing, improving, protecting, or managing the physical or mental health of individuals or groups of individuals”*.
- 2) The profession must be identifiable.
 - i. What is the nature of the activities undertaken by members of that profession?
 - ii. How many practitioners are participating in the profession?
 - iii. Are there any current professional organisations to which members of the profession belong or are eligible to join?
 - iv. Does the public see the members of the profession as an identifiable group?
 - v. Evidence provided by profession should state how the profession considers itself different from other professions which practice in similar areas (i.e. identifying what the profession does that is not within the training and/or competence of another profession)
- 3) There is evidence of need for regulation

Provide evidence that goes to the purpose of the Act. Specifically, applications should identify:

- i. The nature, frequency and severity of the potential risk to the public
- ii. The likelihood of the risk occurring
- iii. The nature, frequency and severity of the harm to, or the consequences for, the public
- iv. Whether there are existing public safety concerns resulting from the activities of unregulated practitioners

In addressing the risk of harm in this context you should endeavour to identify that risk associated with the practice of the proposed profession, as distinct from risks inherent in the area of health care within which the profession operates.

Where the focus of a proposal is more on the public interest than on the risk of harm, to accord with the principal purpose of the HPCA Act, there must also be some significant health-related aspect of the work of the putative profession in which it is appropriate to be seeking to protect the health and safety of members of the public.

Supporting evidence should identify if the profession is regulated overseas, and what risks (especially those to the public) have been identified in overseas experience or studies.

Provide a list of the organisations and individuals consulted on the regulation of this health service together with a summary of issues and concerns raised, agreements reached and any other matters.

Evidence of general agreement on qualifications, standards and competencies

1. Identify how the profession has been consulted on the application and what views were expressed [*NB: the Ministry will then be able to use this information during the decision-making process as well as background for further discussions*]
2. Identify what sort of courses or training are currently offered for members of the profession
3. Identify what qualifications are generally held by members of the profession and the degree of uniformity in qualifications across members
4. List the agreed qualifications, standards and competencies expected of practitioners once regulated. [*NB in assessing the list of qualifications expected of providers the Minister will be guided by the requirements in section 11 and 12 of the HPCA Act. These sections are contained in the Appendix to this Protocol*]
5. Provide evidence of how the qualifications, standards and competencies expected of practitioners reduces the public's risk of harm or helps achieve the public interest
6. Provide evidence of general agreement among the profession or representatives of the profession on the qualifications, standards and competencies expected of health practitioners of that profession
7. Identify the relationship between the generally agreed qualifications, standards and competencies of the profession proposed to be regulated, and the current scope(s) of practice of existing responsible registration authorities. Where possible this analysis should specify the similarities and differences in the qualifications, standards and competencies; at what educational level; whether at an accredited institution; whether continuing competency is a requirement of the profession (with details of the programmes and auditing processes)
8. Identify if service providers (such as District Health Boards) and the New Zealand Quality Assurance/universities accord any standing or status to the profession and the qualifications

New authority or addition of profession to existing authority?

The starting premise when it comes to this decision is whether an existing authority agrees with the proposal or not and, if it does not, whether there is an overwhelming reason to override that authority.

To assist in this decision, applicants may be required to provide further information. That is, factors such as:

- Estimated establishment costs
- Estimated ongoing costs – including estimated compliance costs for service providers, employers and self-employed practitioners
- Evidence that the benefits of regulation under the HPCA Act exceed the costs
- Whether there are any similarities with scopes of practice, qualifications, training and competencies of other registered practitioners
- Whether the proposed new profession works closely with or maintains close professional links with any current authority
- Whether the proposed new profession wishes to establish a new authority or to form part of a current authority
- If it wishes to form part of a current authority, what the current authority thinks about the proposal and what expectations there are, if any, over representation of the proposed profession on the current authority.
- If a blended authority is suggested, is a name change required.

Assessment and decision by Minister of Health

The Ministry of Health will advise the Minister of Health on decisions to be taken on any applications received. This will require the Ministry to independently assess whether the public is at risk of harm or whether it would be in the interest of the public to regulate the health service.

This will involve:

1. Reviewing the evidence provided in the application (including undertaking separate investigation into overseas experience and evidence)
2. Consulting internally, drawing on available Ministry clinical expertise and if necessary, engaging independent clinical advisors to advise the Ministry
3. Consulting with any organisation that, in the Minister's opinion has an interest in the recommendations. This may include consulting with DHBs, registration authorities and individuals or organisations within the practitioner group

If a decision is taken to recommend that the health services in the application be designated as a health profession, a separate decision will be required on whether to create a new authority or to add that profession to the ambit of an existing authority. The Ministry will:

1. Consider the information provided by the applicant on the establishment of a new authority or the joining with an existing authority
2. If a blended authority is going to be considered, arrange a discussion between the Ministry, the new profession and the existing authority to talk through issues (including whether the proposed new profession should be represented on the authority)
3. If agreement is reached, go ahead with the rest of the process
4. If agreement is not reached, look at why not and see if any of those issues can be dealt with

Appointment of authority and requirement to register

The Minister will give effect to any decisions by recommending to the Governor-General an Order in Council. Any such Order in Council will prescribe the date that the decisions come into effect. It is likely that that date will take into account the time required to appoint authority members. The appointment process (which includes calling for nominations) can take some months.

The new authority (or any existing authority to which a profession has been added) will be required by the HPCA Act to gazette the necessary scopes of practice for that profession. Once that is done, practitioners undertaking the services described in the scopes of practice will be required to be registered with that authority.

Appendix:

Health Practitioners Competence Assurance Act 2003 - Sections 11, 12, 15 and 16

11 Authorities must specify scopes of practice

- (1) Each authority appointed in respect of a profession must, by notice published in the *Gazette*, describe the contents of the profession in terms of 1 or more scopes of practice.
- (2) A scope of practice may be described in any way the authority thinks fit, including, without limitation, in any 1 or more of the following ways:
 - (a) by reference to a name or form of words that is commonly understood by persons who work in the health sector:
 - (b) by reference to an area of science or learning:
 - (c) by reference to tasks commonly performed:
 - (d) by reference to illnesses or conditions to be diagnosed, treated, or managed.

12 Qualifications must be prescribed

- (1) Each authority must, by notice published in the *Gazette*, prescribe the qualification or qualifications for every scope of practice that the authority describes under section 11.
- (2) In prescribing qualifications under subsection (1), an authority may designate 1 or more of the following as qualifications for any scope of practice that the authority describes under section 11:
 - (a) a degree or diploma of a stated kind from an educational institution accredited by the authority, whether in New Zealand or abroad, or an educational institution of a stated class, whether in New Zealand or abroad:
 - (b) the successful completion of a degree, course of studies, or programme accredited by the authority:
 - (c) a pass in a specified examination or any other assessment set by the authority or by another organisation approved by the authority:
 - (d) registration with an overseas organisation that performs functions that correspond wholly or partly to those performed by the authority:
 - (e) experience in the provision of health services of a particular kind, including, without limitation, the provision of such services at a nominated institution or class of institution, or under the supervision or oversight of a nominated health practitioner or class of health practitioner.
- (3) A notice under subsection (1) may state that 1 or more qualifications or experience of 1 or more kinds, or both, is required for each scope of practice that the authority describes under section 11.
- (4) An authority must monitor every New Zealand educational institution that it accredits for the purpose of subsection (2)(a), and may monitor any overseas educational institution that it accredits for that purpose.

115 Authorities may be appointed in respect of additional professions

- (1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister –
 - (a) designate health services of a particular kind as a health profession; and
 - (b) either –
 - (i) establish a body corporate, to be known by a name stated in the order, as the authority appointed in respect of the profession designated under paragraph (a); or
 - (ii) provide that the profession designated under paragraph (a) is to be added to the profession or professions in respect of which an existing authority is appointed.
- (2) If an Order in Council contains a provision of the kind authorised by subsection (1)(b)(ii), the order may also –
 - (a) change the name of the authority concerned to reflect the change made by the order; and
 - (b) amend any enactment (for example, this Act) to reflect the name change effected by the order.
- (3) The Minister may recommend that an Order in Council be made under subsection (1) only if satisfied of the matters stated in section 116.
- (4) An Order in Council under subsection (1) is a regulation for the purposes of the regulations (Disallowance) Act 1989.

116 Conditions for designating health services as health profession

Before making a recommendation under section 115(1), the minister must, after consultation with any organisation that, in the minister's opinion, has an interest in the recommendation, be satisfied of the following matters:

- (a) either—
 - (i) that the provision of the health services concerned poses a risk of harm to the public; or
 - (ii) that it is otherwise in the public interest that the provision of health services be regulated as a profession under this act:
- (b) that providers of the health services concerned are generally agreed on—
 - (i) the qualifications for any class or classes of providers of those health services; and
 - (ii) the standards that any class or classes of providers of those health services are expected to meet; and
 - (iii) the competencies for scopes of practice for those health services.