30 April, 2025

Ministry of Health

By email: workforceregulation@health.govt.nz

# Putting Patients First: Modernising health workforce regulation

## About the Australian and New Zealand College of Anaesthetists

ANZCA, which includes the Faculty of Pain Medicine and Chapter of Perioperative Medicine, is the leading authority on anaesthesia, pain medicine and perioperative medicine. It is the professional organisation responsible for postgraduate training programs of anaesthetists and specialist pain medicine physicians, and for setting the standards of clinical practice throughout Australia and Aotearoa New Zealand. Our collective membership comprises 9649 fellows, pain medicine specialists and trainees, of which about 1300 work in Aotearoa New Zealand. ANZCA is committed to upholding Te Tiriti o Waitangi in the provision of competent, culturally safe care, and to promoting best practice and ongoing continuous improvement in a high-quality health system.

## Consultation

ANZCA welcomes the opportunity to provide feedback on the discussion document *Putting Patients First: Modernising health workforce regulation* and the online questionnaire accompanying this review of the health workforce regulation – the Health Practitioners Competence Assurance Act, 2003 (HPCA). This submission is informed by discussion and consultation with ANZCA members and committees, in particular members and chairs of ANZCA's New Zealand National Committee and Faculty of Pain Medicine. In addition, we continue to be informed by detailed analysis and discussion with Australian colleagues who, with comparatively minor differences in regulation, share the same high standard of public safety effected by robust health workforce regulation, and face similar challenges in meeting health workforce demand and addressing entrenched disparities in health outcomes, particularly for Indigenous peoples.

ANZCA is a member of the Council of Medical Colleges (CMC) and supports its submission.

We note that this review of the HPCA, which the legislation supports, differs from earlier reviews, in the lack of open, systematic consultation with regulators and health practitioner bodies within a reasonable timeframe. We are concerned with the lack of clarity about the review process post the 20 working day consultation timeframe, including reference to AI analysis and disappointed by the response from Dr Joe Bourne, Chief Medical Officer, Ministry of Health, (22 April, 2025) to the legitimate concerns the CMC raised over this review with regard to amending factually incorrect statements, removing bias and extending the timeframe. This breaches standard good

practice for consultation to inform sound policy advice as outlined, for example, in the Department of the Prime Minister and Cabinet (DPMC) Guidance document on consultation[1] which stipulates reasonable timeframes. We agree with its statement that "Ideally, consultation should take place with agencies, key stakeholders, and interest groups, as a policy is being developed" and trust that there will be further engagement.

## Preamble

A cornerstone of our health legislation, the HPCA provides a robust framework that prioritises public health and safety through comprehensive regulation that ensures the fitness and competence of health practitioners to practise, public engagement, and professional development supporting a highly competent, trained health workforce, able to meet the current and future health needs of all New Zealanders. It is consistent with international regulation and has served us well for more than 20 years: notwithstanding challenges, we are living longer, healthier lives; have systems to ensure quality, safety and continuous improvement in healthcare; and there is a high level of public trust in our health practitioners and confidence in the safety of treatment. As with former reviews, this review is an opportunity to incrementally improve and update the legislation to maintain public health and safety in the current health environment, which ANZCA welcomes.

The material supporting this review of the HPCA, however, has caused considerable alarm among ANZCA staff and members, fundamentally because of the conspicuous misunderstanding of the purpose of the legislation: to protect public health and safety. The conflation of the role of regulators in assuring patient safety, with that of policy makers in ensuring, for example, accessibility; misapprehension of cultural competence and its relation to clinical competence; and misinformed and prejudicial framing indicates a predisposition towards regulatory change which foreshadows a risk of seriously reducing public safety and the quality of our health workforce, without making any difference, other than a negative one, to health care access, equity or outcomes. We reiterate the need for further targeted consultation, to achieve our shared goals for the health system.

We have recorded our submitted responses to the online questionnaire below but take this opportunity to comment on each of the four areas set out in the consultation document. We strongly support the use of plain language and public engagement in all aspects of regulation - which the HPCA provides for - but are concerned with the lack of detail and simplistic presentation of information – which is sometimes inaccurate and/or misleading, without relevant explanation, meaningful examples, or references. In particular, the role of the regulators is so poorly and pejoratively described in the context of this legislative review, that the implication throughout the document is that regulators and practitioners are responsible for aspects of the health system quite outside their sphere of influence or control.

[1] 2024 Cabinet paper consultation with Government agencies | Department of the Prime Minister and Cabinet (DPMC) https://www.dpmc.govt.nz/publications/cabinet-paper-consultation-government-agencies

## 1. Patient-centred regulation

### Public consultation

ANZCA strongly supports public input into regulatory decision-making of health practitioners. We disagree, however, that regulatory decisions are made without public involvement. Lay and consumer representation and input are accommodated throughout the structure and functions of the responsible authorities (RAs), including on professional conduct committees, as required by the HPCA. We also note the considerable efforts many RAs have made in extending public knowledge and awareness of the purpose and processes of regulation, and in engaging effectively and respectfully with Māori, and with diverse consumer groups. We support embracing new opportunities for transparent information-sharing and public consultation and question the validity of the two scenarios offered. Pharmac routinely seeks public feedback through its open consultation webpage, addressing the issue which Scenario A (p4) raises. Similarly, Scenario B, poses a 'dead' issue, as a simple internet search will determine whether a health practitioner, such as a physiotherapist, is registered.

### Membership of regulators

Expert regulation requires expert input; it is not a matter of RAs being 'dominated by the professions' but of ensuring the right advice of those qualified to understand what is safe and what is not. Patients and whānau prioritise safe care to a high standard. When undergoing anaesthesia ,for example, they care about skills and qualifications of their practitioners; parents want to ensure their children are getting the safest care. The current regulatory regime continues to ensure that anaesthesia in New Zealand is extremely safe. We consider it good practice to regularly review the composition of boards to ensure balance of knowledge and skills, particularly relevant clinical expertise.

ANZCA strongly disagrees with the quite egregious and unsupported statement: "When members of an authority are practitioners, decisions are more likely to be based on the interests of the profession, which may not match the public interest". Our members train for many years, are subject to the highest standards and scrutiny, and deliver outstanding results under working conditions that are sometimes well below those in comparable OECD countries. Patient safety and wellbeing – that is, ie public interest - is the core of their profession and maintained by standards of practice and codes of conduct developed by regulators in response to complex, rapidly-changing technologies and improved scientific knowledge. Following changes to the HPCA during the previous review, RA's Core Performance Standards are independently reviewed and offer considerable assurance that public health and safety, not the 'interests of the profession' are prioritised.

### Focus on regulation

Aotearoa New Zealand embraces multiple cultures within the bicultural partnership between Māori and Tauiwi established by Te Tiriti o Waitangi. The impact of 'culture' on health, an understanding of which is critical to improving outcomes for all, is profound and extends well beyond ethnicity. The consultation document is oblivious of the advances in health science over

the past fifty years[2], (led in large part by Aotearoa New Zealand and widely embraced internationally) which evidence and provide the rationale for cultural safety to be part of all scopes of practice. The title of this review "Putting patients first" and emphasis on public input and incorporating patient views and needs, however, reflect the changed social attitudes and expectations of patient/whānau and practitioner relationships.

### Enabling patient choice

The consultation paper advocates regulators being required "to consider the impact of their decisions on competition" - in contradiction of earlier warnings against potential domination of professional interests. There is a significant risk of the primary purpose of regulation being undermined if RAs were subject to direction or had to prioritise aspects other than public health and safety, but their independence and expertise is what guarantees public safety. We are confident that RAs are aware of, and consider, health workforce pressures and opportunities, including New Zealand's ability to sustain training, ongoing support and oversight for all regulated roles, given the resources of our small, diverse and aging population. A wide range of factors affect patient choice, costs and access to healthcare, and commensurate risks if patient safety is not prioritised. Maintaining a strong generalist medical and nursing workforce ensures safe, cost-effective primary health care, and optimises our ability to respond to innovation and new models of care in a timely and efficient manner.

## 2. Streamlined regulation

Efficient, cost-effective regulation is always desirable and ANZCA would welcome investigation of ways in which RAs could collaborate to develop common standards across the professions, where possible; research and respond to emerging issues; and share costs and backroom functions. Some of these are already in effect, for instance, the Nursing Council of New Zealand provides backroom functions for several smaller RAs. We suggest disaster preparedness and digital health capability are areas where a seamless nationally coordinated strategy is desirable.

The consultation document implies that the number of RAs proportional to population is linked to efficiency and cost effectiveness, without providing evidence of either; we advise caution with such comparisons. While Australia (Pop. 28 m) and the United Kingdom (Pop. 68m) have fewer independent RAs, the processes they follow are similar, with distinct Boards and Councils for most practitioner groups *in addition* to those in their respective constituent states, which significantly adds to the complexity, potential duplication and costs of regulation. Without a robust cost benefit analysis, it is not clear that amalgamating RAs will lower costs. While there may be some room for amalgamation of RAs managing professions with small practitioner numbers in Aotearoa New Zealand, ANZCA strongly recommends that medicine and nursing, which comprise the majority of practitioner roles, remain distinct and independent.

We are puzzled by Scenario A suggesting that Pharmac was initiated as a joint venture with regulators and has reduced bureaucracy. Pharmac was formed in 1993, a decade before the HPCA, as a joint partnership between health funding agencies, not health regulators, and for an

2Tipene-Leach et al, Cultural Safety and the medical profession in Aotearoa New Zealand: a training framework and the pursuit of Māori health equity, NZMJ 2024 Dec 13; 137(1607)

entirely different purpose. The “powers of direction" alluded to in the previous section refer only to ‘competition and access’. It is not clear if wider powers of direction are being considered, such as those the government has just exercised in directing regulation of physician associates, but the protection of public health and safety must remain the priority. Health practitioners work in multi-disciplinary teams (MDT) and it is essential that they have a shared understanding of the roles of those they work with, to avoid confusion, misplaced expectations and poor outcomes. We cannot support the multiplicity of regulated practitioner roles found in other countries, and scopes of practice differ, even between similar countries, because health systems and services differ in response to population needs, resources and cultures. What may be safe practice in one country, may not be safe in another; the RAs are best placed to negotiate both the risks and opportunities afforded by changing scopes of practice, to ensure safety and cost effectiveness.

## 3. Right-sized regulation

With respect to the above, we refer you to the independent Core Standards Performance Review of the Medical Council of New Zealand Te Kaunihera Rata o Aotearoa (MCNZ), facilitated and published by the Ministry of Health (2021)[3] . The following details one of several ways in which the MCNZ demonstrates ‘right sized’ regulation.

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| S10.2 Ensure the principles of right-touch regulation are followed in the implementation of all its functions | The six principles of right-touch regulation are proportionate, consistent, targeted, transparent, accountable, and agile. The Council demonstrates these principles through its policies, processes, systems, consultations, plans, strategic direction and how it works with education providers and doctors. Council delegations apply across the activity of Council. The robust and transparent use of delegations plays a key part in Council’s effectiveness and delivery on the right-touch principles. Examples of application of the six principles of right-touch regulations includes the Council’s approach regarding health notifications, associated monitoring mechanisms, active risk management and whether to immediately suspend a doctor or whether to propose to impose conditions or suspend a doctor. The Council’s most recent five-year strategic plan was “Towards 2022” and was updated in 2019. It set out the vision, values, purpose, principles, five goals and five strategic directions, along with the key influencers in their planning environment. |

We disagree with the consultation document that “it is no-one's job” to ensure timely registration of internationally-qualified health practitioners; that we have a “one size fits all” approach to health regulation; and that we are “turning away skilled and experienced migrants”. Registration is the regulators’ responsibility, subject to the purpose of the HPCA; standards vary according to scopes of practice which are only regulated where there is a risk of harm; and the

[3] BSI Group New Zealand Limited. Responsible Authority Core Performance Standards Review Report: Medical Council of New Zealand. New Zealand: Ministry of Health; December 2021. Available from: https://www.mcnz.org.nz/assets/Publications/Reports/4c0c4e252e/MCNZ-RA-Review-Final-published-report-December-2021.pdf .

large proportion and turnover of international graduates that continue to comprise our regulated health workforce offers emphatic evidence that we are not turning away skilled migrants. Historically, New Zealand has an extremely poor record of both general migrant and health workforce retention, as has been explored in decades of research and discussion, for example OECD (2008) 4, Hawthorne (2014) 5, ASMS (2017)6 , NZNO (2017)7 which indicate the responsibility lies not with regulators, but with global, migration and employment policy levers, which are outside the regulators' control.

ANZCA works with MCNZ to provide safe and timely (often within 20 working days) registration of specialist international medical graduates (SIMGs) in anaesthesia, from many different countries. We acknowledge the very real challenges of recognising international qualifications from diverse countries with hundreds of training providers. We also acknowledge MCNZ's innovative 'Comparable Health System' pathway enabling overseas trained doctors from 26 countries to apply for registration based on work experience, not just qualifications. Regulation of medical professionals in New Zealand is demonstrably flexible and efficient.

This could improve timely access to appeal processes and reduce reliance on the courts, provided the tribunal is appropriately funded and staffed with clinical, educational, and regulatory expertise.

### Alternative regulation

Accreditation, credentialling and certification, are aspects of regulation that are used by various bodies – employers, professions, training providers - to determine specific proficiencies. They cannot be used to replace regulation of a scope of practice.

#### Review of regulation decisions

ANZCA does not support ministerial review such as ministers having the authority to overturn decisions of the regulators, or to refer to an independent body for review because of the risks to public safety and confidence and potential costs. RAs were established as independent statutory bodies to strengthen confidence in decision-making that is objective and that encompasses long-term goals that go beyond political cycles or 'market' fluctuation in areas such as workforce supply.

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[4] Zurn, P. and J. Dumont (2008), "Health Workforce and International Migration: Can New Zealand Compete?", OECD Health Working Papers, No. 33, OECD Publishing, Paris, https://doi.org/10.1787/241523881673.

[5] Hawthorne, L. (2014). A Comparison of Skilled Migration Policy: Australia, Canada and New Zealand. Melbourne. Retrieved from http://sites.nationalacademies.org/cs/groups/pgasite/documents/webpage/pga_15 2512.pdf

[6] Association of Salaried Medical Specialists, Research Brief: International medical migration: How can New Zealand compete as specialist shortages intensify? ASMS: Wellington 2017. Retrieved from IMG-Research-Brief_167359.5.pdf

[7] Head, M, Internationally qualified Nurses: Migration and other issues. Discussion document. NZNO: Wellington. February 2017. Retrieved from: https://www.researchgate.net/publication/313904347_Internationally_Qualified_Nurses_Immigration_and_other_issues_Discussion

There are established appeal and review processes for practitioners to challenge decisions of the RAs. There may be some merit in establishing an occupational tribunal to hear appeals of registration decisions for individual practitioners, if appropriately resourced and with the requisite expertise being guaranteed. However, we would not support a tribunal being able to "assess the registration of overseas countries with similar or higher standards than New Zealand" as this duplicates the role of RAs and a small tribunal would not have the comprehensive knowledge and experience the RAs have developed over the past two decades.

## 4. Future-proofed regulation

We agree that regulation must keep pace with change as new technologies and new ways of working emerge and are confident that the HPCA allows regulators to be flexible and responsive while maintaining the primary purpose of protecting public safety. "Regulators operate in a complex environment at the interface among public authorities, the private sector and end-users"[8]and must balance a range of conflicting factors and be protected from undue influences, to ensure impartial, evidence-based decision-making that is 'future proofed'. This section of the consultation document makes an unsubstantiated case for government direction but suggests broad 'solutions' that could put the independence of regulators at risk. We suggest that that risk would extend to the government itself, which could be more exposed to pressures to act, particularly over issues which may attract industry or media attention. The independence of the regulator ensures a balance between government, regulators and interest groups is maintained.

## CONCLUSION

Thank you for the opportunity to contribute to this latest review of the HPCA which we believe is generally working well, ensuring safe health care and a well-trained health workforce capable of meeting the current and future health ne eds of all New Zealanders We have submitted our response to the online questionnaire and confirm ANZCA's support for:

- Separate regulation of health professions
- Transparency
- Public consultation and engagement to seek and understand patients' views
- Maintaining the independence of regulators
- Cultural safety

We do not support:

- Ministerial review of regulators' decisions
- Ministers having the authority to appoint Borad members or direct RAs
- Establishing an Occupational Tribunal
- Accreditation, credentialling or certification as an alternative to regulation or to fast-track employment before registration

We would welcome the opportunity for further discussion.

[8] OECD (2016), Being an Independent Regulator, The Governance of Regulators, OECD Publishing, Paris, https://doi.org/10.1787/9789264255401-en.

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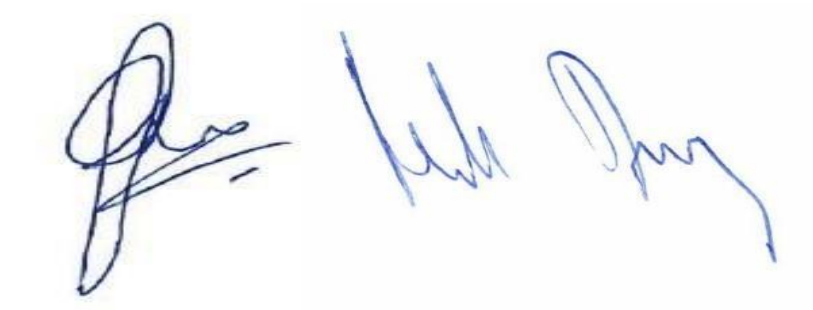

**Graham Roper**
Chair
New Zealand National Committee

**Rachel Dempsey**
Deputy Chair
New Zealand National Committee

For further information please contact: Stephanie Clare, ANZCA Executive Director – New Zealand, sclare@anzca.org.nz +64 4 897 5722 +64 27 711 7024

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