ANZCA
AUSTRALIAN AND NEW ZEALAND COLLEGE OF ANAESTHETISTS

FPM
FACULTY OF PAIN MEDICINE ANZCA

Submission to the Health Select Committee on the Health Practitioners Competence Assurance Amendment Bill

April, 2018

To serve the community by fostering safety and high quality patient care in anaesthesia, perioperative medicine and pain medicine.

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1. Executive Summary

The Health Practitioners Competence Assurance Amendment Bill was introduced to the New Zealand Parliament on February 15, 2018. It passed its first reading on February 20, 2018 and is now being considered by the Health Select Committee. The Bill aims to clarify the interpretation of the Health Practitioners Competence Assurance Act and improve its operation. Among other changes, the Bill amends provisions in the Act to clarify that responsible authorities can receive and act on information from members of the public; gives the Governor-General, on the recommendation of the Minister of Health, power to amalgamate existing responsible authorities; introduces regular performance reviews of authorities; requires authorities to provide workforce data to the Director-General of Health, and requires responsible authorities to promote and facilitate interdisciplinary collaboration and cooperation in the delivery of health services. The Bill also introduces requirements for responsible authorities to inform notifiers about decisions made in relation to health practitioners who concerns have been raised about.

The Australian and New Zealand College of Anaesthetists (ANZCA), which includes the Faculty of Pain Medicine (FPM), has a keen interest in the Health Practitioners Competence Assurance Act, and in particular the purpose of the Act "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." It is from a patient health and safety perspective, that ANZCA has reviewed the proposed amendments to the Act.

Overall, ANZCA has the following key comments about the Bill:

- Reviews of the Act were completed in 2009 and 2012, and a number of suggestions for improving the protection of public health and safety were made. For example, the Medical Council suggested that regulation of telemedicine should be addressed in the Act, and that there was opportunity to improve links with other legislation such as laws and regulations that deal with the prescribing and administering of medicines and controlled drugs, and adding a requirement for the Accident Compensation Corporation to notify responsible authorities when it has concerns that a practitioner presents a risk of harm. However, ANZCA notes that the opportunity to address these issues has not been taken in the current Amendment Bill.
- ANZCA supports amendments that require the responsible authority to inform the health practitioner concerned; their employer(s); and anyone who works in partnership with them, about any interim suspensions or conditions placed on practising certificates. ANZCA considers that health practitioners who have notified of an issue should be made aware as to whether action has been taken, but do not necessarily need to know the details of the action.
- ANZCA considers that any amendments to allow amalgamation of responsible authorities must be driven by improvement to the health and safety of the public, rather than as a cost-saving mechanism.
- Although strongly supportive of inter-disciplinary collaboration and co-operation in general, ANZCA queries the value and appropriateness of attempting to legislate for this in the HPCA Act.
- ANZCA considers that workforce data collection is not the core role of responsible authorities, and shifting the cost of this to responsible authorities may impact on their ability to focus on their core role of protecting public health and safety.

More detailed feedback on specific clauses of the Health Practitioners Competence Assurance Amendment Bill is provided below, in section four.

2. About ANZCA

The Australian and New Zealand College of Anaesthetists (ANZCA) is the professional organisation for specialist anaesthetists (fellows) and specialist anaesthetists in training (trainees) in New Zealand and Australia.

ANZCA was formed in 1992 following 40 years as a faculty of anaesthetists of the Royal Australasian College of Surgeons. ANZCA is now a world-renowned institution in anaesthesia and pain medicine that has taken a leading role in many areas of anaesthesia, pain medicine and intensive care medicine. These include:

- Being recognised as a world leader in the treatment of pain by establishing the specialty of pain medicine through its Faculty of Pain Medicine.
- Setting high professional standards for patient safety through professional documents and other advocacy activities.
- Answering key questions in medical research by recruiting more than 30,000 patients to help with $A25 million worth of studies for the ANZCA Clinical Trials Network and other research through the ANZCA Research Foundation, which in 2018 alone is funding research worth $1.7 million.
- Training highly skilled future fellows in anaesthesia and pain medicine.
- Hosting more than 30 medical education events annually including the College's flagship event, the ANZCA Annual Scientific Meeting.
- Supporting anaesthesia in developing nations such as Papua New Guinea with clinical and educational visits, and the seeding of the Essential Pain Management program now being taught in 53 countries.
- Establishing intensive care medicine as a specialty by instituting training and accreditation programs through a joint Faculty of Intensive Care, and then by helping found the College of Intensive Care Medicine of Australia and New Zealand.

ANZCA, including FPM, is committed to high standards of clinical practice in the fields of anaesthesia, perioperative medicine and pain medicine. As the education and training body responsible for the postgraduate training programs of anaesthesia and pain medicine for Australia, New Zealand and parts of Asia, the College believes in ongoing continuous improvement and strives to ensure that its programs represent best practice and contribute to a high quality health system. The ANZCA training program is accredited by the Medical Council of New Zealand, and the Australian Medical Council.

ANZCA's mission is to serve the community by fostering safety and high quality patient care in anaesthesia, perioperative medicine and pain medicine.

ANZCA fellows and trainees

At December 31, 2017 there were 721 active and 86 retired fellows and 244 trainees in New Zealand, and 5302 fellows (of whom 667 are retired) and 1268 trainees in Australia.

3. About FPM

The Faculty of Pain Medicine (FPM) is the professional organisation for specialist pain medicine physicians (fellows) and specialist pain medicine physicians in training (trainees).

The Faculty is responsible for the training, examination and specialist accreditation of specialist pain medicine physicians and for the standards of clinical practice for pain medicine in New Zealand and Australia. Formed in 1998, the Faculty is the first multidisciplinary medical academy in the world to be devoted to education and training in pain medicine. Although part of ANZCA, the Faculty's fellowship and representation remains multidisciplinary at all levels. It arose out of collaboration between five participating bodies – ANZCA, the Royal Australasian College of Physicians (RACP), the Royal Australasian College of Surgeons (RACS), the Royal Australian and New Zealand College of Psychiatrists (RANZCP) and the Australasian Faculty of Rehabilitation Medicine (AFRM) of the RACP.

In 2005, the discipline was recognised in Australia as a medical specialty in its own right, and in New Zealand, the Medical Council accredited pain medicine as a scope of practice in 2012. This recognises the importance of the problem of unrelieved pain in the community and the need for a comprehensive medical response through education, training and practice.

The field of pain medicine recognises that the management of severe pain problems requires the skills of more than one medical craft group. Such problems include:

- Acute pain (post-operative, post-trauma, acute episodes of pain in "medical conditions").
- Cancer pain (pain directly due to tumour invasion or compression, pain related to diagnostic or therapeutic procedures, pain due to cancer treatment).
- Persistent (chronic) pain (including over 200 conditions described in the International Association for the Study of Pain (IASP) *Taxonomy of Chronic Pain 2nd Edition*, such as phantom limb pain, post-herpetic neuralgia, mechanical low back pain). In New Zealand, chronic pain affects more than one in five adults (21%).

In New Zealand and Australia, a career in pain medicine is generally obtained by qualifying as a Fellow of the Faculty of Pain Medicine, Australian and New Zealand College of Anaesthetists (FFPMANZCA). Pain specialist training is also open to vocationally registered general practitioners and other specialists.

Fellows of FPM have a wide knowledge of the clinical, socio-psycho-biomedical and humanitarian aspects of pain and are well placed to follow a developing and challenging career path.

In 2016, world recognition for the Faculty was achieved through the awarding of the 2017 American Academy of Pain Medicine's (AAPM) Robert G. Addison, MD Award given in recognition of outstanding efforts to foster international co-operation and collaboration on behalf of the specialty of pain medicine. The European Pain Federation is now also using FPM's revised curriculum as the basis for its diploma. The FPM training program is accredited by the Medical Council of New Zealand, and the Australian Medical Council.

FPM fellows and trainees

At December 31, 2017 there were 34 active and 1 retired FPM fellows and 9 FPM trainees in New Zealand, and 340 FPM fellows (of whom 24 are retired) and 64 FPM trainees in Australia.

4. ANZCA response to the Health Practitioners Competence Assurance Amendment Bill

4.1 ANZCA position on Health Practitioners Competence Assurance Amendment Bill

ANZCA is focused on training competent anaesthetists and pain medicine specialists to deliver safe, high quality patient care. As such, the Health Practitioners Competence Assurance Act is directly relevant to the work of ANZCA fellows and trainees.

Overall, ANZCA is comfortable with the majority of proposed amendments to the Health Practitioners Competence Assurance Act, and considers the Act to largely be working well. However, ANZCA considers opportunities have been missed in the amendment Bill that would further enhance the ability of the Act to meet its purpose of protecting the health and safety of the public.

ANZCA notes that reviews of the Act were completed in 2009 and 2012, and a number of suggestions for improving the protection of public health and safety were made. For example, the Medical Council suggested that regulation of telemedicine should be addressed in the Act. It also suggested that there was opportunity to improve links with other legislation that deals with the prescribing and administering of medicines and controlled drugs, to enable monitoring of unusual prescribing patterns and proactive intervention when appropriate; and adding a requirement for the Accident Compensation Corporation to notify responsible authorities when it has concerns that a practitioner presents a risk of harm. The opportunity to address these issues has not been taken in the current Amendment Bill.

Specific feedback on a number of the proposed amendments is set out below.

4.4 When authority may review health practitioner's competence

Clause 6:	**Section 36 amended (When authority may review health practitioner's competence)**
After section 36(3), insert: (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.	

ANZCA comment:

ANZCA understands that this amendment will require responsible authorities to inform the notifier, about whether the authority has decided to conduct a competence review of the health practitioner it received the notification about. The notifier in this scenario could be the Health and Disability Commissioner (HDC), or the Director of Proceedings (DoP). ANZCA supports that it would be sensible and in the public interest to inform the HDC or DoP about the competence review, as the HDC and DoP hold office under legislation that is aimed at protecting the public. The notifier could also be another health practitioner, which is a slightly different scenario, as they will not hold the same type of office under legislation. ANZCA supports the concept of informing the health practitioner that action is being taken, but would also caution that confidentiality of the competence review process needs to be maintained. As such, it may be more appropriate to inform a health practitioner notifier that action is being taken, rather than the details of the action at this stage.

4.5 Orders concerning competence

Clause 7:	**Section 38 amended (Orders concerning competence)**
After section 38(3), insert: (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.	

ANZCA comment:

Once again, ANZCA supports the concept of responsible authorities informing notifiers about action taken or orders made concerning competence. This amendment will allow for "closing the loop" so that notifiers are aware action has been taken on their notice. However, as discussed above, careful thought will be needed about the level of detail provided to a health practitioner notifier, in terms of maintaining confidentiality. It may again be appropriate to simply advise a health practitioner notifier that action has been taken.

4.6 Interim suspension of practising certificate or inclusion of conditions in scope of practice pending review or assessment

Clause 8:	**Section 39 amended (Interim suspension of practising certificate or inclusion of conditions in scope of practice pending review or assessment)**
After section 39(3), insert: (3A) If the authority makes an order under subsection (2), the Registrar of the authority must ensure that— (a) a copy of the order is given, within 5 working days after the making of the order, to— (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.	

ANZCA comment:

ANZCA strongly supports this amendment to introduce an obligation for responsible authorities to inform the health practitioner concerned, their employer(s), and anyone who works in partnership or association with them, about any interim suspension of practising certificate or inclusion of conditions on scope of practice. Notifying the employer and/or those who work in partnership or association with the practitioner is an important step for the protection of public safety. We note however, that guidance is likely to be required in terms of how "working in association with" a health practitioner is defined. As above, ANZCA considers that the scenario may be slightly different in terms of informing any notifier/complainant of the details. The notifier/complainant should be notified that action has been

taken. However, due to confidentiality it may not be necessary for them to know the details of the action, unless they hold a position where it is essential they know for patient safety purposes (for example, if they are the employer of the health practitioner).

4.7 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

Clause 9:	**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)**
(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)". (2) In section 48(3), replace "subsection (1)" with "subsection (2)". (3) Replace section 48(6) with: (6) If the authority makes an order under this section, the Registrar of the authority must ensure that— (a) a copy of the order is given, within 5 working days after the making of the order, to— (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 (b) all administrative steps are taken to give effect to the order. (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.	

ANZCA comment:

ANZCA strongly supports this amendment introducing an obligation for responsible authorities to notify the health practitioner; their employer(s); and anyone who works in partnership with them, if there is an interim suspension of practising certificate or inclusion of conditions in scope of practice, where inability to perform functions due to a mental or physical condition is suspected. Similar to our comments above, notifying these groups is consistent with protecting public safety. Once again, it may not be appropriate to inform a health practitioner notifier of the details, except to inform them that appropriate action is being taken. Maintaining confidentiality is particularly important in the early stages of cases, where inability is simply 'suspected' rather than confirmed.

4.8 Power to order medical examination

Clause 10:	**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.	

ANZCA comment:

ANZCA supports the amendment to enable assessment by a health practitioner.

4.9 Restrictions may be imposed in case of inability to perform required functions

Clause 11:	Section 50 amended (Restrictions may be imposed in case of inability to perform required functions)

(1) In section 50(1)(a), replace "medical practitioner" with "assessor" in each place.
(2) Replace section 50(6)(a) with:
(a) a copy of the order is given, within 5 working days after the making of the order, to—
(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
(3) After section 50(6), insert:
(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.

ANZCA comment:

ANZCA supports the amendment to require responsible authorities to inform the health practitioner; the employer(s); and anyone who works in partnership or association with them, if restrictions are imposed due to an inability to perform required functions. This amendment is consistent with the Act's purpose of protecting public health and safety. Once again, the notifier should also be informed that action is being taken, but it may not be appropriate to inform the notifier of all the details, if confidentiality needs to be maintained.

4.10 Revocation of suspension or conditions

Clause 12:	Section 51 amended (Revocation of suspension or conditions)

(1) In section 51(1), replace "section 39 or section 50" with "section 39, 48, or 50".
(2) In section 51(2), replace "section 39 or section 50" with "section 39, 48, or 50".
(3) In section 51(3), replace "section 39 or section 50" with "section 39, 48, or 50".
(4) Replace section 51(6)(a) with:
(a) a copy of the order is given, within 5 working days after the making of the order, to—
(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) any person who,—
(A) under **section 39(3A)(a)(iv)**, has received a copy of an order made under section 39 to which the revocation relates; or
(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

ANZCA comment:

ANZCA supports the above amendment, and considers it appropriate that if a responsible authority revokes suspension or conditions on a health practitioner, the responsible authority must notify those made aware of the original order against the health practitioner, under section 39 (competence), 48 (mental or physical condition), or 50 (inability to perform functions).

4.11 Reporting requirements

Clause 13: Section 35 amended (Reporting requirements)
In section 58(1), replace "6 months" with "1 year".

ANZCA comment:

ANZCA supports this amendment to extend the reporting period of Protected Quality Assurance Activities from six months to 12 months, reducing the number of reports that need to be produced and therefore administrative burden.

4.12 Referral of complaints and notices of conviction to professional conduct committee

Clause 14: Section 68 amended (Referral of complaints and notices of conviction to professional conduct committee)
Section 68 amended (Referral of complaints and notices of conviction to professional conduct committee) (1) Replace the heading to section 68 with "**Referral of complaints, notices of conviction, and information to professional conduct committee**". (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".

ANZCA comment:

ANZCA supports the above amendment to allow a degree of discretion about whether a responsible authority has to refer a notice of conviction to a professional conduct committee. The thresholds for referring notices to a professional conduct committee seem appropriate, and overall, introducing a degree of discretion is likely to enable a more efficient, less costly way of dealing with minor offences.

4.13 Interim suspension of practising certificate pending prosecution or investigation

Clause 15:	Section 69 amended (Interim suspension of practising certificate pending prosecution or investigation)

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
(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
(3) Replace section 69(5) with:
(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—
(a) the following persons are notified as soon as practicable that the order or revocation has been made:
(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
(b) all administrative steps are taken to give effect to the order or revocation.

ANZCA comment:

ANZCA supports the above amendment, and considers it appropriate and in line with the purpose of the Health Practitioners Competence Assurance Act that responsible authorities should only suspend the practising certificate of a practitioner facing criminal proceedings or investigation, if the authority believes that the practitioner's conduct poses a serious risk of harm to the public. ANZCA also considers it appropriate that responsible authorities will still be able to put conditions on a health practitioner's practising certificate at a lower threshold – that is – when the authority believes the conduct casts doubt on the appropriateness of the practitioner's conduct in their professional capacity.

ANZCA also supports the amendment to require responsible authorities to notify the health practitioner; their employer(s); and anyone working in partnership or association with the practitioner, of any suspension or conditions placed on the health practitioner's practising certificate.

4.14 Chairperson may prohibit publication of names pending hearing of charge

Clause 16:	New section 92A inserted (Chairperson may prohibit publication of names pending hearing of charge)

After section 92, insert:
92A Chairperson may prohibit publication of names pending hearing of charge
(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—
(a)
the health practitioner; or
(b)
any other person; or
(c)
the health practitioner and any other person.
(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.
(3)
An order continues in force until whichever of the following occurs first:
(a)
the expiry of any period specified in the order:
(b)
the order is revoked by the chairperson of the Tribunal:
(c)
the charge against the health practitioner is heard by the Tribunal.
(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.

ANZCA comment:

ANZCA supports this amendment to enable the Chairperson of the Health Practitioners' Disciplinary Tribunal to prohibit publication of the name of the health practitioner or any other person, if in the interests of any person and in the public interest, pending hearing of the charge. It seems consistent with presumption of innocence and avoidance of trial by media prior to the substantive hearing to be able to prohibit publication of names, until a case has been heard and determined. In some cases the public interest may outweigh the private interest of the practitioner, such as when notification of the charge may lead to identification of other similar potential charges against that health professional.

4.15 Interim suspension of registration or imposition of restrictions on practice

Clause 17:	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.
(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.

ANZCA comment:

ANZCA supports this amendment that the Tribunal may suspend a practitioner's registration if it believes that the practitioner's conduct poses "a serious risk of harm to the public." ANZCA also considers it appropriate that the tribunal can place conditions on the health practitioner at the lower threshold, of the Tribunal being satisfied that it is necessary or desirable to do so, to "protect the health and safety of members of the public."

ANZCA also supports that the Tribunal must give a copy of any of the above orders to the health practitioner; the responsible authority; and the employer(s). The RA must then give a copy to anyone the Tribunal tells them to.

4.18 Orders limiting restoration of registration

Clause 20: Section 102 amended (Orders limiting restoration of registration)

(1) Replace section 102(1) with:
(1) When making an order that the registration of a health practitioner be cancelled, the Tribunal may do either or both of the following:
(a) fix a date before which the person may not apply for registration again:
(b) impose 1 or more conditions that the person must satisfy before the person may apply for registration again.
(2) In section 102(2), after "conditions", insert "imposed under **subsection (1)(b)**".
(3) In section 102(3), replace "under" with "of the kind specified in".
(4) After section 102(3), insert:
(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.

ANZCA comment:

ANZCA agrees with the concept of allowing the Tribunal to fix a date before which a health practitioner who has had their registration cancelled, may not apply for registration again. However, ANZCA has some concerns that this may create a perception that once the date passes it will be automatically appropriate

for the health practitioner to be registered again (rather than that it would be inappropriate for the health practitioner to be registered before this date).

ANZCA also queries whether any guidance on time frames will be provided (e.g. the maximum length of time a Tribunal could specify), or whether this will be at the discretion of the Tribunal.

4.19 Orders of Tribunal

Clause 21: Section 103 amended (Orders of Tribunal)

After section 103(2), insert:

(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.

ANZCA comment:

ANZCA supports the amendment to allow the Tribunal to direct a copy of orders made under section 101(1)(a) to (d) against a health practitioner who is an employee, to be given to that health practitioner’s employer. It is important that an employer can be provided with this information, for the protection of the health and safety of members of the public in line with the purpose of the HPCA Act.

However, this amendment does not take self-employed health practitioners into account. In the case of self-employed health practitioners, it should be considered whether the Tribunal should have the power to direct copies of orders to be given to hospital credentialing committees, and to anyone who works in partnership or association with that health practitioner.

4.24 Amalgamation of authorities

Clause 26: 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
(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.

116B Effect of amalgamation

On the date on which existing authorities amalgamate,—

(a) the amalgamated authority succeeds to all the property, rights, powers, and privileges of each of the amalgamating authorities; and

(b) the amalgamated authority succeeds to all the liabilities and obligations of each of the amalgamating authorities; and

(c) proceedings pending by, or against, an amalgamating authority may be continued by, or against, the amalgamated authority; and

(d) a conviction, ruling, order, or judgment in favour of, or against, an amalgamating authority may be enforced by, or against, the amalgamated authority.

116C Final report of authority

(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.

(2) The final report must be for the period (the **report period**)—

(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**.

ANZCA comment:

This amendment gives the Governor-General, by Order in Council, on the recommendation of the Minister of Health, the power to amalgamate two or more existing responsible authorities, so long as the authorities concerned have been consulted, and the Minister is satisfied it is in the public interest to amalgamate.

ANZCA considers the main driver of amalgamation is likely to be as a cost-saving mechanism. However, the primary purpose of the HPCA Act is protecting the health and safety of the public. As such, any proposals to amalgamate should be based on whether the Minister is satisfied that amalgamation will improve the safety and quality of healthcare for the public. Public safety must be kept first and foremost to avoid any inadvertent lowering of standards when engaging in cost saving exercises. Any expected benefits and risks of amalgamation should be clearly and transparently demonstrated.

A key function of responsible authorities is to ensure that health practitioners are competent and fit to practice their professions. This requires expert input from health practitioner groups themselves, as to what clinical standards practitioners should be expected to meet. It would be important not to lose the input of any health practitioner group, if responsible authorities were to be amalgamated.

4.25 Functions of authorities

Clause 27: Section 118 amended (Functions of authorities)

(1) Replace section 118(f) with:

(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:

(2) After section 118(j), insert:

(ja) to promote and facilitate inter-disciplinary collaboration and co-operation in the delivery of health services:

ANZCA comment:

Regarding 118(f), ANZCA supports the amendment to allow regulatory authorities to receive and, if appropriate, act on information from members of the public about the practice, conduct or competence of health practitioners. This is consistent with the purpose of the HPCA Act to protect public health and safety.

Regarding the amendment to 118(j), although the concept of promoting and facilitating inter-disciplinary collaboration and co-operation is commendable, specifying it as a role of responsible authorities under legislation seems inappropriate. It is unclear what the legislation would require of responsible authorities in this regard, and how compliance with the legislation would be monitored. Also, it seems unlikely that promoting and facilitating inter-disciplinary collaboration would be effectively achieved through legislation. Inter-disciplinary collaboration already exists and is a major component of healthcare delivered by teams. Furthermore, organisations such as the medical colleges already put significant effort into fostering inter-disciplinary collaboration. For example, ANZCA's curriculum has strong emphasis on collaboration and team work in its curriculum, under the CanMEDS framework. Anaesthetists are expected to take on roles as communicators, collaborators, health advocates, and professionals. Training in these areas develops anaesthetists who are skilled in team work and collaboration. At the organisational level, ANZCA also works collaboratively with other health practitioner groups to advance safety and quality initiatives in the health sector.

4.26 Performance reviews of authorities

Clause 28: 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—

(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.

ANZCA comment:

ANZCA supports the concept of performance reviews for responsible authorities in general, but notes that the Minister may already ask for a report from a responsible authority if he or she is concerned about the performance of that responsible authority. Requiring performance reviews five yearly will have cost implications for the health sector and this will need to be appropriately balanced. If the cost of reviews increase responsible authorities' expenditure, the cost may be passed on to the sector via the cost of practising certificates. In the public sector, these costs would in large part be borne by Vote Health, reflecting the nature of the prevailing industrial agreements, and in the private sector they will be passed directly onto the consumer. For these reasons, it is important that the purpose of such reviews is made explicit, including reasons why other methods with a lesser cost would not achieve the same purpose. Ultimately, there needs to be a degree of confidence that augmented governance requirements yield value for money to the New Zealand healthcare consumer with the realisation of tangible benefits in terms of protecting public health and safety.

We also note that while responsible authorities will need to meet the cost of the review, the Ministry of Health will be responsible for appointing the reviewer and setting the terms of reference. This gives responsible authorities little control in managing the financial burden of the review. It seems more appropriate that the Ministry, as the agency appointing the reviewer and setting the terms of reference, should also meet the cost of the review.

4.27 Information about health practitioners

Clause 29: New section 134A and cross-heading inserted

After section 134, insert:

Information about health practitioners

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.

ANZCA comment:

This amendment requires responsible authorities to provide the Director-General of Health annual data on health practitioners registered with the authority, for workforce planning purposes. The information required will include name, date of birth, employer's name, places of work, and average hours worked per week. Although we agree that much of this data would be helpful for workforce planning purposes, we have several concerns about the proposed amendment, as follows:

- We are unclear why the Director-General of Health would need the names of health practitioners for workforce planning purposes, and we suggest that data provided should be de-identified. Collecting names does not appear to fit with the principles of the Privacy Act. Principle one of the privacy principles notes that personal information can only be collected by an agency if it is connected with a function or activity of the agency; and the collection of the information is necessary for that purpose. However, the names of individuals are unlikely to be necessary for workforce planning purposes.
- We are aware that responsible authorities, such as the Medical Council of New Zealand, do an excellent job of workforce data collection. However, the proposed amendments to the legislation do not empower responsible authorities to collect the data expected, such as the average weekly number of hours worked.
- The role of workforce planning, including data collection, sits with Health Workforce New Zealand. Health Workforce New Zealand's terms of reference specifies it is responsible for "overseeing the collection and analysis of data describing the health workforce that is consistent across employers, regulators and the Ministry; synthesising data and interpreting, distributing the analysis to the sector and prospective health workforce." We understand that Health Workforce New Zealand currently contracts responsible authorities to provide de-identified workforce data, which helps cover the cost responsible authorities carry from collecting and analysing the data. This amendment will essentially shift the cost from Health Workforce New Zealand, to responsible authorities. As described above, such costs may be passed to the sector via practising certificate fees, and essentially come from Vote Health. We consider it more appropriate that data sharing is addressed by reviewing contractual agreements between Health Workforce New Zealand, and the responsible authorities.
- We also highlight that responsible authorities principally exist for the registration and oversight of practitioners of a particular health profession, in terms of ensuring health practitioners are competent and fit to practise. Collecting data for the purposes of workforce planning strays from the core purpose of the HPCA Act, and of responsible authorities. Expecting authorities to collect and report workforce data to the Ministry annually may impact on their ability to prioritise their core business of protecting the health and safety of the public. Having adequate funding for the role may mitigate this risk, so once again, it would be more appropriate to address data collection through the contracts between Health Workforce New Zealand, and responsible authorities.

4.28 Meaning of naming policy

Clause 30:	**New sections 157A to 157I inserted**
After section 157, insert:	

157A Meaning of naming policy

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).

157B Authorities to issue naming policies

(1) Each authority must issue a naming policy not later than 12 months after this section comes into force.

(2) The purpose of the naming policy is to—

(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

(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

(c) improve the safety and quality of health care.

(3) A naming policy must set out—

(a) the class or classes of health practitioners in respect of whom the naming policy applies; and

(b) the circumstances in which a health practitioner may be named; and

(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—

(a) not—

(i) a legislative instrument for the purposes of the Legislation Act 2012; or

(ii) a disallowable instrument for the purposes of the Legislation Act 2012; and

(b) not required to be presented to the House of Representatives under section 41 of the Legislation Act 2012.

157I Authority naming health practitioner in accordance with naming policy protected by qualified privilege

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.

ANZCA comment:

ANZCA supports the amendment requiring regulatory authorities to develop naming policies, and considers it appropriate for responsible authorities to have clear and transparent policies that are publicly available and set out consistent principles about whether or not a practitioner should be named publicly. Such policies will need to be based in the parameters of the legislation, and take into account findings on appeal from the appeals court, in relation to publicly naming practitioners.

ANZCA supports the requirement that naming policies must also have regard to the consequences to the health practitioner of being named, including the likely harm to the health practitioner's reputation.

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