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# DIETITIANS BOARD

## Te Mana Mātanga Mātai Kai

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This submission has been prepared on behalf of the Dietitians Board. Any enquiries should be addressed to Sue Domanski, Registrar, the Dietitians Board, by email: [dietitians@dietitiansboard.org.nz](mailto:dietitians@dietitiansboard.org.nz), PO Box 9644, Wellington 6141, NEW ZEALAND. Phone DDI: (+64) 4 474 0746

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### GENERAL COMMENTS

The Dietitians Board (the Board) thanks the Ministry of Health for the opportunity to comment on the Health Practitioners Competence Assurance (2003) Amendment Bill.

The purpose of the Board is to set, monitor and promote competence, continuing professional development and proper conduct for the practice of dietetics in the interests of public health and safety through Regulation of Dietitians under the Health Practitioners Competence Assurance Act 2003 (the Act).

The Board agrees there is a case for change in some aspects of the delivery of health practitioner regulation in New Zealand and acknowledges continuing quality improvement is important in a changing environment.

The Board is supportive of an approach to achieve consistency and collaboration between Regulatory Authorities where there is a demonstrated benefit to do so. Recent colocation with nine other Regulatory Authorities has led to some strengthening of regulatory functions and the Board acknowledges there are opportunities for achieving further efficiencies and regulatory consistency.

The Board is also supportive of developing transparent systems to better inform and protect the public.

The Board is concerned that some of the proposed amendments will incur additional costs to Regulators that will need to be passed on to practitioners.

The Board is aware other Regulatory Authorities have made more detailed submissions on proposed technical amendments to the Act, and have also identified a number of drafting errors that require addressing. The Board supports these submissions.

### SPECIFIC COMMENTS

The Dietitians Board wishes to submit specifically on some of the proposed amendments in the Health Practitioners Competence Assurance Amendment Bill (the Bill) as well as raise some additional matters that have not been raised in the Bill as follows:

Section Amended	Dietitian Board submissions on proposed amendments
Section 17	The Board considers it unlikely a Dietitian registered under the Dietitians Act 1950 would be applying for registration under the HPCA Act 2003 and owe any monies from that time, and submits this proposed amendment is not required.
Section 36 Section 38 Section 39	The Board supports the proposed amendments clarifying who should be notified and at what stage.
Section 48 Section 50 Section 51	The Board welcomes the inclusion of an express statutory power to share information regarding notifications and is in agreement with the proposed amendments to these sections.

	<p>The Board notes that some individuals who have made notifications to the Board have indicated a desire to know the Board’s determined action on receipt of the notification i.e. the next steps and outcome.</p> <p>To provide a fully transparent system, the Board submits that the proposed amendments include greater clarity regarding the Board’s obligations to provide information to members of the public and/or notifiers who raise concerns about a practitioner's competence, or where a consumer complaint to the Health and Disability Commissioner (HDC) has been passed to the Regulatory Authority with the recommendation to review the practitioner's competence.</p> <p>The current legislation provides no direction regarding whether information regarding the outcome of any notification should be provided.</p> <p>The Board recommends an express statutory power be included for a Regulatory Authority to inform complainants/notifiers.</p> <p>The Board submits that in some circumstances, a “5 working day” turnaround can be difficult to achieve and submits “10 working days” is a more realistic timeframe</p>
<p><b>Section 49</b></p>	<p>The Board supports the proposed amendment regarding the ‘Power to order examination or testing’.</p> <p>This amendment would enable the Board to select the most appropriate examination/test and the most appropriate professional to undertake this order.</p> <p>The Board supports the proposed amendment to replace ‘a medical practitioner’ with ‘an assessor’ and submits that this person should be a registered health practitioner. Implementing this amendment would remove the requirement to add subsection (8).</p> <p>The proposed amendment to subsection (5) refers to an assessor consulting with "any other practitioner who the assessor considers is able to assist". The Board submits that to provide greater clarity, subsection (5) be amended to refer to “any other registered health practitioner”.</p> <p>The Board also submits that subsection (5) be expanded to include “and any other persons who the assessor considers should be consulted” to enable information be obtained from, for example, an Iwi elder or Counsellor, where appropriate.</p> <p>The Board submits the obligation to give at least 5 days' notice for testing be reconsidered. If a lapse of 5 days were allowed, the provision for testing could be rendered ineffective as some substances of abuse may be cleared from blood and urine within this timeframe.</p>
<p><b>Section 68 (2A)</b></p>	<p>The Board wishes to submit on the matters raised in Section 68 in general, as this section requires a Professional Conduct Committee (PCC) to be convened for matters that could be relatively minor in nature and submit that a more efficient and effective mechanism for protecting public health and safety could be utilised in such instances. Allowing the Regulatory Authority discretion to undertake an assessment in a more timely manner, such as through a health committee, could reduce costs and unnecessary stress for all parties.</p>

	<p>Undertaking PCC's and referring to the Health Practitioner Disciplinary Tribunal (HPDT) can be very costly. The Board submits a wording change from "the authority must..." to "the authority may, following assessment of the matter refer the notice to a PCC".</p> <p>The Board supports an amendment that provides Regulatory Authorities with less costly and less time-consuming alternatives, for actions that are considered minor in nature.</p>
<p><b>Section 69</b></p>	<p>The Board is concerned with the proposed amendment to section 69, that the practising certificate of the health practitioner can 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.</p> <p>It is unclear what would constitute "serious harm" as this is undefined, and whether a Regulatory Authority has the capability to independently make this assessment/judgement. Other parts of the Act refer to "risk of harm".</p> <p>To enable a Regulatory Authority to act quickly and efficiently regarding such matters, the Board submits there should be clarity and consistency throughout the Act with what constitutes 'risk of harm/risk of serious harm' and that a Regulatory Authority be able to make a 'without notice' suspension or place conditions on a practitioner's "Scope of Practice", which would provide more time to further investigate the matter.</p>
<p><b>Section 103A and 104A</b></p>	<p>The Board acknowledges there are costs associated with the functioning of the Health Practitioner Disciplinary Tribunal (HPDT), but does not support the proposed amendment that Regulatory Authorities be charged on a per registrant basis to fund the HPDT.</p> <p>The approach proposed could result in Regulatory Authorities being charged for practitioners who are still registered, but are no longer practising, those who are retired or in some cases deceased, given the time lag and cost involved in revising the Register in accordance with section 144.</p> <p>The Board submits that if this approach is adopted, the cost be based on practitioners holding a current Annual Practising Certificate, not based on registered practitioners.</p> <p>The Board requests clarification around the specific costs that Regulatory Authorities would be expected to cover, as the proposed amendment provides no indication what 'general administration costs' would consist of and these would need to be budgeted for and passed on to practitioners.</p> <p>The Board submits that a "user pays" approach be utilised and that the cost of the HPDT be on charged to the Regulatory Authority, if, and when, it utilises them.</p>
<p><b>Section 116A and 116D</b></p>	<p>The Board supports the general proposition of gaining operational efficiencies through merging and/or amalgamating Regulatory Authorities. The Board has experienced some operational efficiency improvements since co-locating with 9 other Regulatory Authorities two years ago, but notes these are not necessarily financial efficiencies.</p>

	<p>The Board submits that any merger or amalgamation of a Regulatory Authority be made with full and robust consultation with the Regulatory Authorities involved, employers and the profession(s), to ensure that changing the structure is evidence based, demonstrates a clear public benefit and achieves the desired operational efficiencies without additional financial costs.</p> <p>The Board seeks clarity regarding how “in the public interest” is defined and measured.</p> <p>The Board submits any amalgamation or merger should consider a ‘Best Fit’ rationale. Whilst Regulatory Authorities all work under the Act, decision making can be profession/professional standard specific and the similarities/differences of the particular professions, should be taken into consideration.</p> <p>The Board submits any proposed amalgamation/merger should include timely consultation and include the following:</p> <ul style="list-style-type: none"> <li>• Benefit to the public</li> <li>• Characteristics of individual health professions, as they each have different approaches to practice (private/public, large/small professions)</li> <li>• Current fees and levies</li> <li>• Unbundling of individual Regulatory Authority funds</li> <li>• Management structure and governance composition of the amalgamated/merged Authorities</li> <li>• Existing IT systems (databases, Continuing Professional Development platforms, online applications)</li> <li>• A business case quantifying the costs and benefits of the proposed amalgamation/merger</li> </ul>
<p><b>Section 118</b></p>	<p>The Board notes that two new proposed functions have been added to section 118:</p> <ol style="list-style-type: none"> <li>1. 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</li> </ol> <p>The Board supports the clarification provided in subsection (f). The Board notes the following:</p> <ul style="list-style-type: none"> <li>• The health of the practitioner is not included</li> <li>• There is no directive for a Regulatory Authority to investigate the matter itself</li> </ul> <p>The Board requests further clarification and direction be provided to address these points.</p> <ol style="list-style-type: none"> <li>2. To promote and facilitate inter-disciplinary collaboration and co-operation in the delivery of health services</li> </ol> <p>The Board submits that the rationale for the inclusion of this new function, and its intention and scope, requires clarification. In particular the Board seeks clarification on how this would be regulated or measured by Regulatory Authorities and how the Ministry might review this requirement and suggests this is a role for service funders and the profession, rather than the regulator.</p> <p>The “Standards and Competencies of Registered Health Practitioners” as set by the Regulatory Authorities, include requirements to collaborate with colleagues</p>

	<p>in delivering health services. The Board considers this to be an inherent part of being a health professional. As an example, this standard is part of the <i>Professionals Standards &amp; Competencies for Dietitians</i>:</p> <ul style="list-style-type: none"> <li>• “Collaborate with nutrition, dietetic, interprofessional and intersectoral colleagues, clients and other stakeholders to establish and achieve common goals”.</li> </ul> <p>The Board submits that this second proposed amendment not be included as a standalone subsection in section 118.</p>
<p><b>Section 122A</b></p>	<p>The Board welcomes and supports the proposed amendment that Regulatory Authorities be held accountable and review their performance regularly, to ensure they govern and operate fairly, responsibly, effectively and efficiently.</p> <p>The Board submits that a solid framework be developed, based on international best practice, that includes criteria and quality standards applying to all Regulatory Authorities, so that performance can be measured consistently and effectively.</p> <p>The Board seeks clarity regarding the costs associated with performing the review and notes these costs would need to be recovered through practitioner fees, which raises the issue of equity. Smaller Regulatory Authorities are unable to gain the “economies of scale” of larger Regulatory Authorities due to being funded by a smaller practitioner base.</p> <p>The Board also requests further clarity be provided regarding the following points:</p> <ul style="list-style-type: none"> <li>• Frequency of reviews</li> <li>• Advanced notice of review to enable budgetary planning</li> <li>• How a performance review will be undertaken and who will conduct it</li> <li>• Terms of reference (including criteria, expectations)</li> </ul>
<p><b>Section 134A</b></p>	<p>The Board agrees with the proposed amendments seeking to improve workforce data collection and use. The Board has recently enhanced its capacity to collect health workforce data (updated annually at the time of recertification) and supports the collection and sharing of workforce information, as it both informs and contributes to the Ministry’s workforce planning and the Board’s strategic planning and regulatory functions.</p> <p>The Board agrees with the proposed amendments that workforce data when published, should not identify individuals.</p> <p>The Board notes ethnicity is not included in the list provide in section 134A (b) and submits the list be amended to include ethnicity, without limitation.</p> <p>The Board seeks clarity regarding the costs associated with developing and maintaining systems that collect and manage data and notes that these costs would need to be recovered through practitioner fees. As submitted in the previous section, this again raises the issue of equity with smaller Regulatory Authorities unable to gain “economies of scale” due to being funded by a smaller practitioner base.</p>
<p><b>Section 157A – 157I</b></p>	<p>The Board seeks clarity regarding the proposed amendment in relation to the “Naming Policy” and seeks clarity regarding the overarching framework for</p>

	implementing this and the scope of what falls within the policy. It is essential there is consistency across all Regulatory Authorities in terms of how the “Naming Policy” is applied.
<b>Schedule 3 17</b>	The Board supports the proposed amendment that allows for the delegation to establish a PCC to a Regulatory Authority, as this will allow a Regulatory Authority to act more quickly, efficiently and cost effectively, streamlining the process for both Regulatory Authorities and practitioners.
<b>Additional submissions regarding Sections of the Act requiring review and revision</b>	
<b>Section 30</b>	<p>The Board seeks an additional amendment to section 30, requesting the issuing of practising certificates by electronic means be included. This would enable Regulatory Authorities to improve efficiencies and future proof the use of Information Technology (IT) functionality and development.</p> <p>Issuing practising certificates in hard copy is costly and time consuming. All Regulatory Authorities have live online Registers available to the public, employers and all stakeholders that provide evidence of a practitioner’s current practising status.</p> <p>The Board submits that the proposed amendment states: “That the Registrar of the Regulatory Authority may issue practising certificates via electronic means”</p>
<b>Section 34 (1)</b>	<p>The Board seeks an additional amendment to section 34 (1) requesting that it be a mandatory requirement that a practitioner <u>must</u> give notice to the Regulatory Authority, should they believe a colleague of any regulated health profession poses a risk of harm to the public or is practising below the required standard of practice.</p> <p>This would support both public and practitioner safety.</p> <p>As the regulator of the profession, the Regulatory Authority is the appropriate body to determine whether a practitioner poses a risk of harm to the public or is practising below the required standard of practice.</p> <p>Subsection (3) states an employer <u>must</u> give notice, and the Board submits this wording be applied to subsection (1) “If a health practitioner (health practitioner A) has reason to believe that another health practitioner (health practitioner B) may pose a risk of harm to the public by practising below the required standard of competence, health practitioner A <u>must</u> give the Registrar of the Authority that health practitioner B is registered with written notice of the reasons on which that belief is based”.</p>
<b>Section 71 &amp; 73</b>	<p>The Board seeks additional amendments to section 71 and 73 to reduce costs and improve efficiencies of PCC’s by allowing a Regulatory Authority to appoint a legal advisor to the PCC rather than requiring the PCC to engage a legal advisor.</p> <p>The Board submits that the legal counsel providing advice to the Board and PCC should be consistent and, if required, able to take the case to Tribunal on behalf of the Board. This would enable the PCC process to proceed quickly and efficiently and reduce costs.</p>
<b>Section 80</b>	The Board seeks additional amendments to section 80, to provide greater clarity for Regulatory Authorities and practitioners.

	<p>The Board notes that the PCC can make recommendations to the Regulatory Authority on the matter referred, and some of the recommendations (competence review of the practitioner or the practitioner's fitness) can be implemented through existing provisions and powers in the Act.</p> <p>However, the recommendation that the Regulatory Authority 'counsel' the practitioner has no supporting provisions in the Act; therefore, it is unclear what form 'counsel' might take and submits this could be at times ineffectual.</p> <p>The Board therefore submits clarification is required and that 'counselling' be defined in section 5.</p> <p>The Board also notes that currently there appears to be no consequence of a practitioner's non-compliance with a direction to undergo 'counselling'. The only action seems to be a referral to another PCC.</p> <p>The Board submits that the Ministry investigate the use of a 'caution' as applied in the Australian Regulatory environment and that this be an option as a recommendation available to a PCC. If the use of a 'caution' was adopted, it would need to be defined and the process clarified in the legislation.</p>
<p><b>Section 144</b></p>	<p>The Board seeks additional amendments to section 144 as currently undertaking a Revision of the Register, is both time consuming and costly. The Board seeks that the process be streamlined and include the ability to use electronic communication (email).</p> <p>The Board also seeks a shorter period of 3 months, to undertake a revision in order to enable a more timely process to be implemented.</p>

## CLOSING COMMENTS

The Board has one final recommendation and that is that the Act is amended to provide the option for all communication and applications to be allowed to occur electronically. The use of online applications and email is an efficient, secure and cost effective option. For example, completing an online Registration Application is a cost effective, timely and efficient process for both the applicant and the Regulatory Authority. This process would enable electronic filing and would further contribute to a reduction in costs.

The Board would like to advise it would welcome the opportunity to present its submission to the Health Committee.

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**Registrar**  
Dietitians Board  
Te Mana Mātanga Mātai Kai

4 April 2018