

Regulatory Impact Statement: Overview of required information

Regulatory Impact Statement

Amending references to health practitioners in five pieces of legislation

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Health.

It provides an analysis of options to change unnecessarily restrictive statutory references to health practitioners.

It has not been possible to quantify the benefits of the proposed change. However, there are clear benefits and no identifiable costs.

The proposal does not:

- impose additional costs on businesses
- impair private property rights, market competition, or the incentives on businesses to innovate and invest, or
- override fundamental common law principles.

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Status quo and problem definition

1. At present, certain statutory functions are reserved to medical practitioners. For example, the Holidays Act 2003 only allows medical practitioners to provide a certificate as proof of sickness, and the Land Transport Act 1998 only allows medical practitioners and optometrists to provide medical reports on persons unfit to drive. These restrictions impose unnecessary costs on practitioners and the public.
2. Practitioners with the competencies and knowledge to perform a particular statutory responsibility are unable to legally do so. This creates unnecessary costs for the public, who must often wait and pay to see a doctor when another practitioner could carry out an examination or assessment in a more timely and cost-effective manner. The current legislation also interferes with innovative practice, and with practitioners making the best use of their time and resources. As the demand for health services continues to grow, it is becoming increasingly urgent that impediments to innovation and greater efficiency in service delivery are removed.
3. If no change is made to statutory provisions, health services will continue to work around the legal requirements. For instance, a nurse, nurse practitioner or allied health professional may undertake a clinical assessment but a medical practitioner will sign the form. Such situations are onerous for the service, inefficient, a barrier to innovative practice, and may even place the medical practitioner in a legally risky situation.
4. A working group convened by the Ministry of Health compiled a list of legislative provisions that unnecessarily restricts particular activities, powers or rights to doctors. Health sector and government agency stakeholders have identified provisions in eight Acts as priorities for change as they would have a significant impact on practice and service delivery. Some of the proposed changes were subsequently suggested for inclusion on the grounds that they could be amended with minimal additional effort. The proposed amendments are listed in Table 1 below.

5. Table 1: Priority Legislative Provisions to Address

Department Responsible	Legislation	References Identified
Department of Labour	Accident Compensation Act 2001	<ul style="list-style-type: none"> • Medical focus with regards to aid or appliance related prescriptions and input into rehabilitation plans
	Holidays Act 2003	<ul style="list-style-type: none"> • Proof of sickness or injury may include a certificate from a medical practitioner
	Health and Safety in Employment Act 1992	<ul style="list-style-type: none"> • Relating to the appointment and qualifications of departmental medical practitioners • As part of their role, departmental medical practitioners can request employees to be examined by medical practitioners
Ministry of Transport	Land Transport Act 1998	<ul style="list-style-type: none"> • Only medical practitioners and optometrists are required to report medically unfit license holders for medical review of their fitness to drive • Only medical practitioners can authorise the taking of blood specimens for alcohol or drug evidential analysis, from injured people in hospital • Only medical practitioners attached to an assessment centre can provide a drug and alcohol assessment report required for consideration of removal or reduction of certain disqualifications to drive • Only medical practitioners can access donor information without paying a fee and this would be

		extended to donor co-ordinators acting under the instruction of a medical practitioner
	Road User Rule and Worktime and Log Books Rule	<ul style="list-style-type: none"> Only medical practitioners certify medical-related exemptions from using seat belts, child restraints, and wearing safety helmets and support applications for exemption from the requirement to maintain a logbook
	Land Transport (Driver Licensing) Rule 1999	<ul style="list-style-type: none"> Medical examinations required for the assessment of fitness to drive can only be undertaken by medical practitioners, optometrists and occupational therapists.
Ministry of Social Development	Social Security Act 1964	<ul style="list-style-type: none"> Doctor's certificate required for applications for invalids benefit
	Children, Young Persons, and Their Families Act 1989	<ul style="list-style-type: none"> Refers to only doctors performing medical examinations on children suspected of being the victims of abuse
Ministry of Health	Burial and Cremation Act 1964	<ul style="list-style-type: none"> Only doctors can certify death
	Mental Health (Compulsory Assessment and Treatment) Act 1992; Amendment Acts 1999 and 2003	<ul style="list-style-type: none"> District Officers and official visitors may only take a doctor on a visit to a hospital or service, and can only obtain advice from a doctor authorised by the Director Patient documents are provided to the patient's usual doctor

6. Health practitioners are governed by the Health Practitioners Competence Assurance Act 2003 (HPCA Act), which requires that health practitioners may legally only practice within their scope of practice. The health regulatory authorities are responsible for ensuring that health practitioners are fit and competent to practice and ensure that they do not practice outside their scope. Therefore, only health practitioners qualified to undertake the specific activity would be able to do so. Any breaches of this requirement can be referred to the Health Practitioners Disciplinary Tribunal. Statutory certification is part of a scope of practice.

Objectives

7. The objectives of the proposed legislative change are to make it easier for the public to access statutory services from health practitioners; and to facilitate innovative and efficient practice by practitioners.

Regulatory impact analysis

8. As the problem is caused by statutory references, solving it will require statutory change. Two options have been identified:
- Option one: changing references to 'medical practitioners', so they become references to 'health practitioners';
- Option two: adding references to other specific practitioners where 'medical practitioners' are currently specified.
9. Neither option imposes costs on the public or practitioners.
10. Either option would allow a wider variety of practitioners to carry out statutory assessments and provide certification, with benefits to the public in the form of reduced costs and faster access. The changes would also facilitate innovative practice and increased productivity through better use of practitioners' expertise.

11. It is not possible to quantify the benefits of a change ex ante. However, there are clear benefits in terms of service delivery and access, and no identifiable costs.
12. The Ministry of Health prefers option one, as it allows for future flexibility. There is no need to specify particular classes of practitioner, as a practitioner's competence to carry out a statutory function will be governed through a scope of practice. Indeed, specifying particular classes of practitioner would likely require further legislative amendment as practice changes and new roles are developed.

Consultation

13. Health sector stakeholders were consulted on the proposal to amend statutory references to medical practitioners in 2010 and were asked to identify which provisions in the 59 Acts unnecessarily restricting certain activities to doctors were the highest priorities for change.
14. Overall, the sector was in favour of the proposed amendments as they would improve efficiency, reduce some of the workload burden on doctors, and enable other professions to use more of their skills. Submitters from nursing and allied health were supportive of the proposed changes, while some medical groups opposed the changes. The main specific concerns related to accountability in the case of legal challenge to health practitioner assessments and certifications. Other concerns of medical groups tended to be more general in nature, questioning the need to change current arrangements.
15. Provisions in eight Acts, listed in Table 1 above, were identified as priorities for change. The Royal New Zealand College of General Practitioners and the New Zealand Medical Association were consulted further on their concerns in regard to these provisions. The main concerns of these submitters related to the context and environment in which other health practitioners might be undertaking the activities and the potential for sole practitioners to establish services.
16. Administering departments were also consulted and agreed to the amendments, with the exception of the Health and Safety and Employment Act 1992 provisions relating to the qualifications of the departmental medical practitioner.

Risks

17. Consultation with the health sector and government agencies identified several perceived risks associated with the proposed amendments. These were:
 - Risks to public safety if references to 'health practitioner' were to allow practitioners from all regulated professions, including those without relevant qualifications for the specific activity, to perform the activity
 - The potential for practitioners to establish services primarily focused on certain activities, such as fitness to drive assessments outside, and without the supports of, the usual general practice context
 - Other health practitioners may apply less rigour than medical practitioners in performing the activities
 - Legal liability of departments for decisions based on the advice of health practitioners other than medical practitioners

Risks to public safety

18. There is no increased risk to public safety as a result of the proposed amendments as the activities will still only be able to be performed by health practitioners competent to do so. Existing safeguards on practitioner competence and practice through the HPCA Act and the Code of Health and Disability Services Consumers' Rights will still apply. Under section 8 of the HPCA Act, health practitioners must operate within their scope of practice as set by the regulatory authorities. The nature of the activity and scopes of practice will determine which types of health practitioner can perform the activities, just as they currently ensure only medical practitioners with an appropriate scope of practice can perform the activities now.
19. For example, conducting physical examinations of children suspected of being victims of abuse would fall within the scopes of practice of general practitioners, some medical specialists, nurse practitioners, and registered nurses. It would not fall within the scope of practice of other health practitioners such as dietitians, dental therapists or medical laboratory scientists. The nature of the assessment for fitness to drive prescribed by the New Zealand Transport Agency would fall within the scope of practice of general practitioners, some medical specialists, optometrists, occupational therapists, nurse practitioners, and registered nurses. It would not be included in the scopes of practice for psychologists or chiropractors, for example.
20. The regulatory authorities appointed under the HPCA Act ensure that practitioners are fit and competent to practice and operate within their scope of practice. Breaches of this requirement are referred to the Health Practitioners Disciplinary Tribunal.
21. The requirement that only appropriately qualified health practitioners can perform the statutory functions will be emphasised through the interpretation section of the Acts. The definition of a health practitioner in the interpretation sections will specify that they must be working within their scope of practice. The exact wording of the amendments will vary slightly to suit the context of the activity. The Accident Compensation Corporation favours a more extensive rewording of the clause relating to who may input into rehabilitation plans so that it specifies that it is the lead health practitioner providing treatment.

Context of service delivery

22. There is no intention for the context or models of service delivery to change as a result of the proposed amendments. For example, activities that usually take place in general practice now will continue in that context as part of primary care activity. The difference is that registered nurses and nurse practitioners within the general practice would be legally able to perform the activity.
23. In other cases, the activity may be able to be performed by practitioners in other contexts. For example, physiotherapists would be able to provide a certificate as proof of injury for a condition they would normally treat, such as a back injury. A chiropractor or osteopath may also be able to provide a certificate as proof of back injury. However, a certificate is listed in the Holidays Act 2003 as an example of proof of sickness and what constitutes proof must be agreed between the employee and employer. Thus, employers will still be able to require other forms of proof.
24. The development of new service models is not discouraged where they will improve patient care. For example, alternatives to general practice in rural areas, such as

nurse practitioner sole providers, may improve service delivery where there are shortages of general practitioners.

Reliability of health practitioner performance

25. There was a perception that other health professionals may be less responsible than medical practitioners in performing the activities and may apply less rigour in conducting assessments and issuing certificates. There is no evidence that this will occur and all health practitioners are accountable for their practice under the HPCA Act and must demonstrate adherence to prescribed professional standards. The safeguards on medical practitioner conduct and performance apply equally to all health practitioners regulated under the HPCA Act.

Accountability and legal liability

26. In some cases, departmental decisions based on the advice of health practitioners are open to legal challenge and practitioners may need to defend their advice in court. All health practitioners under the HPCA Act are accountable for their practice. Health practitioners cannot be compelled to perform activities for which they do not feel sufficiently competent. Those that choose to perform the statutory functions must be prepared to defend their practice.

Communications

27. Much of the perceived risk can be mitigated by communications to ensure that health practitioners know what is involved in performing the statutory functions, scopes of practice requirements, and legal and professional obligations associated with performing the activities. This will be achieved through the regulatory authorities.
28. Existing communications and guidelines for medical practitioners on the functions will be updated to reflect the changes. Some targeted public education may also be required to inform people of the changes, for example through notices in general practices.

Conclusions and recommendations

29. The Ministry recommends amending the relevant sections of the Accident Compensation Act 2001, Holidays Act 2003, Land Transport Act 1998 and associated land transport rules, Children Young Persons and Their Families Act 1989, and the Mental Health (Compulsory Assessment and Treatment) Act 1992 and Amendment Acts 1999 and 2003 so that references to 'medical practitioners' become references to 'health practitioners'.
30. Amendments to the Social Security Act 1964 will be considered through the Welfare Reform work being undertaken by the Ministry of Social Development. The Burial and Cremations Act 1964 is currently being reviewed by the Law Commission and amendments to the Act will be pursued through that process.
31. The proposal has unquantified benefits, and no costs to the public or practitioners. The general reference to health practitioners also allows flexibility for the future and avoids the possibility of having to make a similar legislative change in the future.

Implementation

32. Legislation will be required to implement the change. Priority will be sought on the legislative programme for 2012.

Monitoring, evaluation and review

33. The Ministry has no plans to review the impact of the legislative change. The proposed change has benefits and no costs to the public.