

Regulatory Impact Statement:

Oral Health Therapy: profession regulation under the Health Practitioners Competence Assurance Act 2003.

Agency Disclosure Statement

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

This assessment considers the analysis of options to regulate the profession of oral health therapy under the Health Practitioners Competence Assurance Act 2003 (the Act). The principal purpose of the Act is to protect the health and safety of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions.

Oral health therapists are currently regulated under the Act under two separate scopes of practice, as dental hygienists and dental therapists. Dental hygienists and dental therapists are no longer trained as separate professions but as oral health therapists, with their own qualifications, training and vocation. Recognising oral health therapy as a health profession under the Act will add clarity in regulating the profession in matters of competence, health and professional conduct.

There are no non-regulatory options being considered in this impact statement.

Neither of the regulatory options covered in this assessment imposes additional known costs on the health sector; impairs private property rights, market competition, or the incentives on businesses to innovate and invest; or overrides fundamental common law principles.

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Executive Summary

1. One of Government's priorities is to make best use of health practitioners to improve patient access to healthcare services in New Zealand. Patient access to health services should be timely and convenient, in order to manage workloads in some settings and where there are issues with access to services such as rural areas or in residential care. Having competent oral health therapists will contribute to these priorities.
2. In November 2016, the Dental Council gazetted a new scope of practice for oral health therapy, which will come into effect on 1 November 2017.
3. In January 2017, the Dental Council of New Zealand (the Dental Council) proposed to the Minister of Health that the profession of oral health therapy be recognised as a health profession under the Act.
4. Oral health therapists will be able to undertake oral health assessment (including risk assessment), care planning (including disease management and preventive strategies, and clinical activities to be performed), and community oral health promotion. These activities include oral health education, disease prevention and oral health promotion for individuals and communities and are core activities, aimed at achieving and maintaining oral health as an integral part of general health.
5. Oral health therapists will be required to meet specific educational and competence standards prescribed by the Dental Council in accordance with their statutory role under the Act. They are required to practise within their scope of practice as determined by the Dental Council consistent with their approved education, training and competence.
6. In addition, oral health therapists will be required to practise as part of dental teams and work collaboratively with other oral health practitioners to provide appropriate and comprehensive care for the benefit of patients' overall health.
7. These practitioners are currently regulated by the Dental Council under two scopes of practice. As these two scopes do not fully reflect oral health therapists' contemporary skills and qualifications, the Dental Council has gazetted an appropriate single scope of practice for oral health therapists that comes into effect on 1 November 2017.
8. The proposal for recognising the profession of oral health therapy will add clarity in the regulation of this group of practitioners. During the consultation, submitters to the Ministry on the proposal were generally in favour of the proposal to regulate the oral health therapy as a profession.
9. The Dental Council will be responsible for the safe practice of oral health therapists.
10. The proposal is cost-neutral for consumers because these practitioners affected by the proposal are already at present regulated by the Dental Council.

Status quo and problem definition

Oral health therapy practitioners

11. Since 2008/2009, New Zealand universities have no longer offered separate qualifications for dental hygienists and dental therapists but now offer qualifications for oral health therapy. These qualifications integrate the skills of dental health therapists, dental hygienists and enhanced skills in practice areas distinguishing their qualifications and practice from the practices of dental hygiene and/or dental therapy.
12. In November 2016, the Dental Council gazetted a new scope of practice for oral health therapists. This scope will come into effect on 1 November 2017.
13. The new scope of practice reflects the increased skills and capabilities of oral health therapists including oral health assessment (including risk assessment), care planning (including disease management and preventive strategies, and clinical activities to be performed), and community oral health promotion. Oral health therapists are required to practice within the scope of practice determined by the Dental Council consistent with their approved education, training and competence.
14. In addition, oral health therapists will be required to practise as part of dental teams and work collaboratively with other oral health practitioners to provide appropriate and comprehensive care to the benefit of patients' overall health.
15. Oral health therapists and dentists and/or dental specialists have consultative professional relationships. The relationship may be held by the oral health therapist with one dentist or dental specialist, or with a number of dentists/dental specialists. The establishment and maintenance of the consultative professional relationship is required for the practice of oral health therapy.

The issue

16. The current scopes of practice for dental hygienists and dental therapists are no longer appropriate for oral health therapy graduates who are qualified to work in oral health.
17. The Dental Council has rectified this by gazetting a new scope of practice notice for oral health therapists which will come into effect on 1 November 2017. This will allow oral health therapy graduates to be registered by the Dental Council to practice within their own scope of practice rather than under the two scopes of practice, dental therapy and/or dental hygiene. Oral health therapists are already a recognised profession in Australia.
18. The proposal recognising the profession of oral health therapy will add clarity to the regulation of this group of practitioners. There is no doubt that practitioners who would be included in the new profession and scope of practice for oral health therapy carry with it potential risk of harm to the public and as such should be regulated by the Dental Council.
19. An advantage of recognising oral health therapists as a profession is that oral health therapists will be able to be appointed by the Minister of Health under section 87 of the Act to sit as members of the Health Practitioners Disciplinary Tribunal Panel. The Dental Council would also be able to appoint oral health therapists as members of professional conduct committees to manage practitioner's conduct and to committees considering matters of a practitioner's competence or health.

Objective

20. This Regulatory Impact Statement considers options for the establishment of oral health therapists as a profession to:
 - Ensure safe practice.
 - Ensure clarity for regulation of the oral health therapist role.
 - Making best use of the knowledge and skills of trained workforce.

Regulatory impact analysis

Status Quo option

21. Under this option the registration of oral health therapists continues to practice under the current regulatory arrangement with practitioners being registered in two scopes of practice, dental health therapy and dental hygiene. These two scopes no longer accurately reflect the broader integrated role undertaken by oral health therapist graduates and the work that they do.
22. The number of registered dental therapists or dental hygienists with separate qualifications is expected to decline as the median age of persons practising in those professions is currently over 50 years of age.
23. From 1 November 2017, oral health therapists will be able to be registered in the oral health therapy scope of practice with the Dental Council but because there is no recognition of the profession under the Act, oral health therapists will not be able to be regulated as a profession in matters of competence and professional conduct.
24. There have been no stand-alone dental therapy or dental hygiene educational qualifications available in New Zealand since 2008/2009.
25. However, the Dental Council have indicated that in the foreseeable future there will still be a need for the separate scopes to continue to allow previously qualified dental therapists and dental hygienists to continue to practise their professions. In the long-term the dental hygienists scope of practice will likely remain for overseas practitioners applying to work in New Zealand as dental hygienists.

Recognition of the Oral Health Therapy profession option – preferred

26. Designation of the profession of oral health therapy under the Act would reflect the current practice and competencies of recent graduates graduating with qualifications to become registered as oral health therapists.
27. Recognition of oral health therapists as a profession would also clarify registration processes for oral health therapists from Australia who wish to work in New Zealand as practitioners.
28. There are 442 registered oral health therapy graduates (as at 30 June 2017) who are eligible to transition into the oral health therapy scope of practice. Another 104 practitioners have the option to register as an oral health therapist if they meet the Council's practice requirements.
29. Additionally as at June 2017 around 60 percent (442/734 dental hygienists) of practitioners practising in the dental hygiene scope of practice, and around 50 percent (442/904 dental therapists) of those practising in the dental therapy scope of practice will be eligible to register in the oral health therapy scope of practice.
30. It is expected that the number of oral health therapists registered will increase annually by approximately 75 oral health therapists. In contrast, the number of practitioners practising in the dental therapy scope of practice has been decreasing by about 44 practitioners per year over the past five years.
31. Under the Act, the Dental Council, as the responsible authority for oral health practitioners, will be responsible for the protection of the health and safety of the public by providing the relevant mechanisms to protect the health and safety of the public to ensure that health practitioners are competent and fit to practise their professions.
32. Oral health therapists who fail to meet the required standards of their scope of practice will be investigated by the Dental Council. Depending on the nature of the issue, the Dental Council will either assist the therapist to meet the standards or, if necessary, implement disciplinary processes as provided under the Act.

33. Table 1 summarises the two options in this RIS.

Table 1: Options to improve better regulation for recent oral health therapists

Outcomes Options	Accurately reflecting current role as well as public recognition	Improving clarity for the purpose of regulation	Making best use trained workforce	Representation on Health Practitioners Disciplinary Tribunal
Status Quo	x	x	x	x
Professional recognition	✓	✓	✓	✓

Statement of net benefit of the proposal

34. Recognition of oral health therapy as a profession will allow oral health therapists to be regulated by the Dental Council to assure their safe practice. It will also provide clarity and professionalism in regard to matters of competence, professional conduct, health and membership of the Health Practitioners Disciplinary Tribunal.
35. Having a clearly defined profession will also mean that new university graduates will be able to practice as oral health therapists and be recognised by the health sector and the public for the qualification and unique skills.
36. Because the practitioners who would be working in the oral health therapy profession are already regulated (as dental hygienists and dental therapists), the proposal will be cost-neutral. The registration fee and the annual practising certificate fee will be similar to the current cost for dental hygienists and dental therapists.

Consultation

37. The Dental Council consulted with relevant stakeholders in 2008, 2014 and 2016 regarding the oral health therapy scope of practice. Safety concerns raised in the consultations has been addressed in the Dental Council scope of practice notice and in the application for oral health therapy to be recognised as a profession.
38. Section 116 of the Act requires that, before recommending a health service to be designated as a health profession, the Minister of Health must be satisfied that the health service poses a risk of harm to the public or that it is otherwise in the public interest that the health service be regulated. In fulfilling this requirement, the Ministry of Health carried out its own consultation on the proposal to recognise oral health therapy as a health profession in March 2017.
39. The agencies consulted included the health responsible authorities, oral health sector professional associations, and oral health providers funded by the District Health Boards (DHBs). The majority of the submissions received by the Ministry were in favour of the proposal to recognise oral health therapy as a health profession and commented that recognition will improve clarity for health practitioners and for the public about oral health therapy. The University of Otago particularly submitted that clarity around the supervision requirements for practitioners would be improved and the consultative relationship and roles of dentists/dental specialists and oral health therapists will be more clearly defined.
40. Concerns were raised by the New Zealand Dental Association (the Dental Association) which is the professional body for dentists and the New Zealand Medical Association (NZMA).
41. The Dental Association did not support the proposal and submitted that: there should be a written agreement required for the consultative professional relationship in the practice of oral health therapy; that they did not agree with the Dental Council's practice of grandparenting oral health graduates to the profession; and that they believed there would be role confusion for the public with another registered profession within a small subset of dental practice. They also did not agree with the Dental Council's gazetting of the oral health therapy scope of practice even after the Dental Council had modified the scope of practice to provide that oral health therapists

are not permitted to provide restorative dental care to patients over 18 years in response to the Dental Association's submission.

42. The NZMA, the association representing the collective interest of doctors, supported the Dental Association's submission not to recognise oral health therapy as a profession but did not raise any new issues about the proposal.
43. The Ministry view is that the oral health practitioners are not required to have written agreements under the proposal as the onus is on the practitioners to ensure that a consultative professional relationship is in place in the interest of safe practice for the protection of the public.
44. On this point the Dental Council agrees that a consultative agreement is necessary but does not require a written agreement. The Dental Council has already set out its expectations and guidance for consultative professional relationships between practitioners who are jointly responsible and accountable for the standard of decisions and care delivered to patients based on professional advice sought and given. This guidance for the consultative professional relationship between an oral health therapist and dentist/dental specialist was published in October 2016 in the Dental Council's *Outcome of the follow-up consultation on the oral health therapy scope of practice*.
45. The Ministry believes that the Dental Council has carefully considered and responded to concerns raised including the justification for grand parenting oral health therapist graduates.
46. The Ministry does not agree with the Dental Association's submission about role confusion. The Ministry believes that the recognition of the oral health therapy profession under the Act will improve clarity about what is expected of the oral health therapist role by the public and practitioners. Moreover, the recognition is genuinely needed because the dental therapy profession is likely to cease to exist in the near future.
47. The Ministry consulted on the proposal with the Treasury, the Ministry of Social Development, Ministry of Education, Ministry of Business, Innovation and Employment, Accident Compensation Corporation, and the Commerce Commission. Parliamentary Counsel Office and the Department of the Prime Minister and Cabinet were informed. No issues were raised by any government agency on the proposal.

Conclusions and recommendations

48. This regulatory impact analysis provides information about the benefits of regulating oral health therapists.
49. The Ministry recommends that the Minister of Health approves oral health therapy to be designated as a profession under section 115 of the Act. The oral health therapy profession would be regulated by the Dental Council of New Zealand.

Implementation

50. This proposal, if agreed, will be implemented by the Ministry of Health.

Monitoring, evaluation and review

51. In accordance with their responsibilities under the Act, the Dental Council will be responsible for monitoring the practice and ensuring the safe practice of oral health therapists.