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Submitted to Putting Patients First: Modernising health workforce regulation
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Your details and privacy

1 What is your name?

Name:
Dental Council

2 This submission is being made by:

on behalf of a group or organisation(s)

Name of group/organisation, if applicable:
Dental Council

3 Please indicate which group(s) your submission represents:

Professional regulator (responsible authority)

Other:

4 Publishing submissions

You may publish this submission

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Patient-centred regulation

1 Would you be interested in having a say on any of the following?

Changes to scopes of practice (what health practitioners can do) and how this affects patient care, Qualification requirements, Other professional standards (for example, codes of conduct) that impact patient experience

2 Are there any other things you think the regulators should consult the public on?

Other things you think the regulatory authorities should consult the public on:

The Dental Council supports the option for public consultation on regulatory decisions involving changes to scopes of practice, qualifications, or professional standards and already consults widely on each of those matters, including with other organisations involved in the health sector (professional associations, educational institutions, accrediting bodies (local and international), the Ministry of Health, other responsible authorities locally and international dental regulators) and with the general public.

The Dental Council also consults on competence related practice standards with members of the public, but this subject is not identified in Question 1.

The Dental Council has not identified any additional matters on which regulators should consult with members of the public.

3 Are there any health practitioners who are currently unregulated but should be subject to regulation to ensure clinical safety and access to timely, quality care?

Health practitioners who are currently unregulated but should be subject to regulation:

The Dental Council agrees with the World Health Organisation that regulation of health practitioners is an essential strategy to minimise instances of patient harm in health services that involve an inherent risk of harm by enabling access to practitioners who meet minimum criteria for patient safety. The provision of healthcare always poses a risk of harm but this must be balanced with the risk of non access to care.

Conversely, regulation is unnecessary where there is no risk of harm. This principle is reflected in section 116 of the Health Practitioners Competence Assurance Act 2003 (HPCAA). Therefore the Dental Council supports proportionate forms of regulation.

The Dental Council has not identified any currently unregulated health practitioners within the oral health setting who should be regulated to ensure clinical safety and access to timely, quality care.

4 Do you think regulators should do more to consider patient needs when making decisions?

Yes

5 What are some ways regulators could better focus on patient needs?

Ways regulatory authorities could better focus on patient needs:

Regulators must always consider the needs of patients as they are at the centre of healthcare delivery and within the wider healthcare system. The primary purpose of the HPCAA requires the Dental Council to focus on public health and safety.

The discussion document recognises that patient needs also include access to a competent workforce, therefore regulators should avoid unreasonable restrictions on patient access to health care. This principle is reflected in section 13 HPCAA which requires responsible authorities to avoid unnecessary barriers to entry and undue costs when prescribing qualifications.

When the Dental Council sets the qualifications and minimum standards of competence for the health professions it regulates, it aims to balance the need for safe treatment against the need to avoid creating unreasonable barriers to entry to the health workforce. The Dental Council has set outcomes-focused accreditation standards that encourage education providers to be innovative and adaptive in their approaches to education. This enables the development of a graduate workforce with contemporary knowledge that can provide optimal care for patients, resulting in improved patient outcomes.

Regulators also need to support Government's Policy statement on health and its National Workforce planning to help ensure the overall objective of delivering better health outcomes for New Zealanders is achieved.

If the Government is concerned that regulators are prioritising professional interests over the public interest, it could extend the obligation of regulators so that they must be guided by the principles in section 13 HPCAA whenever they set standards or make registration decisions that may restrict entry to a health profession.

6 What perspectives, experiences, and skills do you think should be represented by the regulators to ensure patients' voices are heard?

Perspectives, experiences, and skills that should be represented to ensure patients' voices are heard:

To ensure patient voices are heard, responsible authorities should include laypersons who are committed to representing patient interests, reflect the diversity of the New Zealand's multicultural population, and bring direct knowledge of the healthcare system, whether as patients or caregivers, as well as experience with navigating the complexity of health care systems.

Laypersons bring a consumer focus. Lay members should also have relevant governance and policy development experience, so they are able to provide effective oversight of the health professions they regulate.

The Minister appoints three laypersons to the Dental Council and the Dental Council ensures all its sub-committees, legislative committees (competence and conduct) and working advisory groups have lay representation to ensure a consumer perspective in all its processes. The Dental Council considers there is benefit in strengthening the patients' voice through a consumer forum in all cases where the standards being set are patient orientated rather than clinically focused.

7 Do you agree that regulators should focus on factors beyond clinical safety, for example mandating cultural requirements, or should regulators focus solely on ensuring that the most qualified professional is providing care for the patient?

Yes, regulators should focus on factors beyond clinical safety, for example mandating cultural requirements

8 Do you think regulators should be required to consider the impact of their decisions on competition and patient access when setting standards and requirements?

Yes

Streamlined regulation

1 How important is it to you that health professions are regulated by separate regulators, given the potential for inefficiency, higher costs, and duplication of tasks?

Important

Why?:

Health professions should continue to be regulated by separate authorities where it is more efficient and cost-effective to do so. The consultation document does not present any evidence that an alternative model would lead to greater efficiencies, cost reductions or mitigate risk of harm to the public.

The importance of retaining separate regulators may vary by profession and may depend on clinical alignment and level of risk of harm. From a public safety perspective, it is very important that the oral health professions are regulated by a body that understands the intricacies and complexities of oral health care, the oral healthcare system, risk of harm across the system, as well as the collaborative nature of the integrated dental team encompassing all six oral health professions.

The Dental Council considers the current decentralised framework, where related health professions that pose a risk of harm to the public are regulated by an authority with in-depth specialised knowledge of those professions and the risk each poses, is the most efficient and cost-effective form of regulation for the following reasons:

A decentralised approach leverages profession-specific expertise:

The Dental Council regulates several related oral health professions, namely dentists, dental specialists, dental therapists, dental hygienists, oral health therapists, clinical dental technicians, and dental technicians. This approach has enabled the Dental Council to develop and maintain specialist knowledge of the oral health sector and to streamline its processes and standards to be multi-professional within the oral health context, that previously was separate by each oral health profession.

The costs of centralisation are unknown:

The Dental Council is open to increased efficiency and future innovation but can't provide informed comment without knowing what model is proposed, the impact on costs for oral health practitioners and the public safety benefits.

Current legislation already provides a consistent framework for diverse professions:

One of the key strengths of the HPCAA's decentralised approach is that it leverages profession-specific expertise while maintaining consistency through the Act's overarching requirements (e.g., a common legislative framework for registration criteria, annual practicing certificates and recertification).

2 To help improve efficiency and reduce unnecessary costs, would you support combining some regulators?

Yes

Comments:

Amalgamation should occur where it would result in greater efficiency or effectiveness:

The Dental Council supports combining some regulators where it would demonstrably improve efficiency and reduce costs. It is possible to achieve efficiencies, reduce duplication of tasks and costs, and create multiprofessional standards where related professions are combined under a single regulator, as evidenced by the experience of the Dental Council which operates as a multiprofessional regulator of six oral health professions.

The proposed structure and form of combining some regulators is not explained in the consultation document. The Dental Council is unable to make informed comment regarding greater efficiency and cost reduction without knowing what model of amalgamation is proposed.

The Dental Council notes the failed amalgamation of 16 institutes of technology and numerous industry training organisations into a single entity, Te Pūkenga, illustrates the challenges and risks of combining diverse entities. The resulting operational challenges and financial troubles led to inefficiencies.

Any amalgamation would need to ensure the retention of appropriate clinical expertise at a scope of practice level, such as expert panels for each profession, because operational case management involves nuanced judgement calls that are very different in nature from one case to the next. For example, irrespective of the future structure adopted to regulate oral health professions, complaints involving dentists would still need to be assessed by professional advisors with dentistry expertise.

Depending on the model of amalgamation, back office savings may be possible, but these benefits can be offset by increased bureaucracy, slower decision-making, and added layers of management - factors that may elevate the risk of harm to the public.

Data migration involving potentially 100,000's practitioners, with practising histories of up to 40 years each and data that is currently stored on multiple different databases would be a complex, time-consuming and high risk activity.

In addition, if the regulator(s) were established as a Crown entity, significant additional costs would arise through performance of the additional responsibilities applicable to Crown entities, including enhanced financial reporting requirements, responding to Official Information Act requests, and meeting the Crown's te Tiriti obligations.

Regulators already work together collaboratively:

No law change is needed for regulators to work together, they can just do it if it makes sense. The Dental Council supports and actively engages in such collaboration with other responsible authorities and shares resources wherever it is efficient to do so. For example, the Dental Council shares premises and facilities with the Pharmacy Council. The Dental Council developed its Standards Framework and shared this resource with the Physiotherapy Board and other responsible authorities. The Dental Council was world leading in shifting its accreditation standards to outcomes based standards that were shared with Dietitians Board, Pharmacy Council, and other responsible authorities.

The Dental Council meets frequently with other responsible authorities to discuss matters of common interest and works on the development of interdisciplinary standards applicable to multiple professions (for example, the Dental Council collaborated with six other responsible authorities - Medical Council, Nursing Council, Midwifery Council, Pharmacy Council, Podiatry Board, and Optometry Board - to develop a set of prescribing principles, led by Pharmacy Council, for health practitioners in September 2024).

Regulators are already efficient:

Existing legislation encourages responsible authorities to work efficiently and effectively and gives the Ministry of Health mechanisms that measure and address regulator performance in this context. In particular, section 122A HPCAA mandates regular performance reviews by independent reviewers appointed by the Ministry of Health focusing on operational performance. Where recommendations for improvement are made, responsible authorities must respond to them and address them in their annual reports.

The most recent performance review of the Dental Council confirmed that the Dental Council performs its functions in an efficient and effective manner. The Dental Council is addressing the only recommendations for improvement, which related to cultural competence and equitable Māori participation

and were assessed by the reviewers as low risk.

Right-sized regulation

1 Do you agree that these regulatory options should be available in addition to the current registration system?

Yes

Yes

Yes

Any other options:

The HPCAA is designed to regulate health professions where the services provided could pose a risk of harm to the public if performed by unqualified or incompetent practitioners. The HPCAA achieves public safety by requiring all practitioners in those professions to be registered with a responsible authority that sets standards of competence and ethical conduct.

The Dental Council agrees that the options of accreditation, credentialling and certification could be useful mechanisms for regulating lower risk professions in addition to the current registration system.

Other useful regulatory options could include expanding the remedies available to health consumers under existing consumer legislation, such as the Consumer Guarantees Act 1993, the Fair Trading Act 1986, and the Code of Health and Disability Services Consumers' Rights 1996 made under the Health and Disability Commissioner Act 1994.

For example, health consumers can bring claims up to \$30,000 before the Disputes Tribunal against suppliers who breach guarantees of due care and skill, fitness for purpose, time of completion, or reasonable price under the Consumer Guarantees Act 1993. However, these remedies are only available for health services provided by a supplier "in trade" (e.g., by private hospitals, clinics, dentists, natural therapists, or allied health professionals). Public health services, such as services provided in public hospitals, are typically not covered, as their suppliers are not "in trade."

2 Do you think New Zealand's regulatory requirements for health workforce training, such as the requirement for nursing students to complete 1,000 hours of clinical experience compared to 800 hours in Australia, should be reviewed to ensure they are proportionate and do not create unnecessary barriers to workforce entry?

Yes

3 Should the Government be able to challenge a regulator's decision if it believes the decision goes beyond protecting patient health and safety, and instead creates strain on the healthcare system by limiting the workforce?

Yes

Comments:

Statements in the discussion document criticise registration decisions made by responsible authorities and suggest that authorities apply statutory registration criteria in a bureaucratic and overly restrictive manner that limits entry of applicants to the health professional workforce. Without evidence of specific concerns involving Dental Council decisions, it is difficult to respond to this criticism.

Dental Council applies registration criteria appropriately

The Dental Council's registration processes are detailed in its registration policies, gazette notices, and standards framework, available on its website (dcnz.org.nz). The Dental Council applies those processes to ensure registrants are qualified, competent, and safe to practise, aligning with the HPCAA's focus on public protection and with 'right touch' principles of transparency, proportionality, consistency, and accountability.

These principles are supplemented by the legal obligation of the Dental Council, as a public body that exercises statutory power affecting individuals' rights, to act lawfully, fairly and reasonably and in accordance with the rules of natural justice. An obvious tension exists between the need for the Dental Council to comply with the law, which inevitably involves additional procedural steps and processing time, and the discussion paper's objective of dismantling "a bloated system of bureaucratic red tape."

Dental Council decisions are already subject to challenge

Responsible authorities are accountable because registration decisions can be challenged through several legal avenues:

- Appeal to the District Court (section 106 HPCAA), where the Court can overturn any decision to refuse registration or to include conditions in a person's scope of practice
- Judicial review in the High Court to challenge the lawfulness, fairness, or reasonableness of the decision-making process
- Human Rights Review Tribunal for discrimination claims.

Secondary legislation made by responsible authorities under the HPCAA, such as Standards, fees and levies can already be reviewed through the Regulation Review Committee, as disallowable instruments.

Proposal for Ministerial challenge

The discussion document proposes to address the perceived lack of accountability of responsible authorities by giving the Minister authority to challenge a regulator's decision if the regulator's processes, practices or criteria go beyond what is necessary to protect patient health and safety, which could involve a power to refer decisions to an independent body for review.

The discussion document rightly notes that the Government should avoid improperly influencing individual decisions. This means Ministerial power should be limited to challenging the processes, practices or criteria behind contested decisions not the decisions themselves, to avoid stepping into individual cases that are properly the domain of the Courts and Tribunals, including deciding among other things, whether decisions are lawful and comply with the rules of natural justice.

The Dental Council supports the idea that Government-set expectations for regulators can benefit patients and the health sector. The Dental Council recommends the Minister issue annual letters of expectation outlining clear goals and priorities that help regulators align with Government policy.

4 Do you support the creation of an occupations tribunal to review and ensure the registration of overseas-trained practitioners from countries with similar or higher standards than New Zealand, in order to strengthen our health workforce and deliver timely, quality healthcare?

Yes

Comments:

The Dental Council supports considering an Occupations Tribunal to review and ensure the registration of overseas-trained practitioners from countries with similar or higher standards than New Zealand if there is evidence that responsible authorities are not properly applying section 15(2) HPCAA, which enables them to treat any overseas qualification as a prescribed qualification if that qualification is equivalent to, or as satisfactory as, a prescribed qualification.

However, the Dental Council notes that any failure to apply section 15 HPCAA correctly is already a matter that can be appealed in a District Court under section 106 HPCAA. Furthermore, any failure to consider relevant evidence (or taking into account irrelevant considerations) can be addressed through judicial review in the High Court.

In summary, in setting up any Occupations Tribunal, the Government would need to carefully define the Tribunal's jurisdiction to avoid overlapping with the functions of existing adjudicative bodies, which would be inefficient and costly.

5 Should the process for competency assessments, such as the Competence Assessment Programme (CAP) for nurses, be streamlined to ensure it is proportionate to the level of competency required, allowing experienced professionals who have been out of practice for a certain period to re-enter the workforce more efficiently, while still maintaining clinical safety and quality of care?

Yes

If so, what changes should be made?:

The Dental Council lacks the information required to comment on the Nursing Council programme. However, the Dental Council supports, in principle, streamlining competence assessment programmes to expedite experienced practitioners' re-entry into the workforce.

Like the Nursing Council, the Dental Council must consider all applications for an annual practising certificate (APC) where the applicant has not held an APC of a kind sought by the application within the past 3 years, as required by section 27 HPCAA. In such cases, authorities must be satisfied that the applicant meets the required standard of competence before issuing an APC.

The Dental Council's Recency of Practice Policy provides a framework for oral health practitioners returning after a three-year or more absence, facilitating a smooth return to practice. Requirements imposed depend on whether the applicant maintained registration and an APC during their absence, the length of absence, and their ability to demonstrate ongoing competence. The process may involve re-registration, competence assessment (especially for absences over five years), supervision and compliance with recertification obligations. The level of intervention and the regulatory tools utilised will be proportionate to the length of time away from practice.

The process is individualised and designed to ensure each applicant's individual circumstances are considered, enabling a timely return to practice while maintaining clinical safety.

6 Do you believe there should be additional pathways for the health workforce to start working in New Zealand?

Yes

Comments:

The Dental Council supports simplifying the registration process for overseas oral health practitioners with suitable qualifications and skills. It agrees with the discussion document's view that additional pathways should be created to help overseas-trained health practitioners start working more easily.

The Dental Council currently has multiple pathways to registration including:

- prescribed NZ qualifications by profession
- recognised overseas prescribed jurisdictions - Australia, USA, Canada, UK and Ireland
- The Dental Council accepts applicants for individual assessment from any country not prescribed
- The Dental Council accepts three examination pathways – New Zealand, Australia and Canada.

The Dental Council will shortly consult on the extension of prescribed overseas qualifications to recognise 17 of the 27 European countries and 4 Asian/West Pacific countries for registration with an initial supervised practice period. The benefit of gazetting equivalent overseas qualifications as prescribed qualifications is that the overseas applicants go through a streamlined process similar to that for New Zealand graduates.

Recently Council approved a remote learning component for one its accredited programmes which introduces an "earn as you learn" educational pathway where students remain in their own communities whilst training. This could be further promoted.

Future-proofed regulation

1 Do you think regulators should consider how their decisions impact the availability of services and the wider healthcare system, ensuring patient needs are met?

Yes

Comments:

The Dental Council agrees that responsible authorities must avoid creating unnecessary barriers to entering the health workforce. This includes considering the impact of Dental Council decisions on the availability of oral health services and the wider healthcare system, streamlining registration processes, and recognising overseas qualifications to facilitate the registration of suitably qualified applicants. In setting qualifications and standards of competence, the Dental Council strives to balance the need for safe treatment against the need to avoid unreasonable entry barriers.

Nevertheless, the primary responsibility of responsible authorities is to protect public health and safety, not to expand the workforce. In particular, they have no control over factors like funding and resourcing, workforce planning, training opportunities, remuneration, employment conditions, opportunities for advancement and promotion, overseas opportunities, recruitment and retention policies, employment relations, or the availability of funded positions (or rather the failure to fund an adequate number of positions in the public health system). These factors significantly affect patient access to affordable health care, particularly in primary, community, and rural settings.

The reasons for the systemic shortages evident in the health workforce are complex but they arise primarily due to these factors, not the actions of responsible authorities, whether individually or collectively. Broader solutions from Government and the wider health sector are needed to address these issues.

2 Do you think the Government should be able to give regulators general directions about regulation?

Yes

Comments:

The Dental Council suggests that the Government should issue annual letters of expectation that set out clear goals and priorities to help regulators align performance of their functions with Government policy objectives.

This could include setting priorities for investigating emerging professions, or qualifications from a particular country, to better serve patients' needs.

3 Do you think the Government should be able to issue directions about how workforce regulators manage their operations, for example, requiring regulators to establish a shared register to ensure a more efficient and patient-focused healthcare system?

Yes

Comments:

The Dental Council agrees that the Government should be able to direct regulators to collaborate and streamline their operations.

Nevertheless, good governance principles suggest that individual regulators should be left to determine how to achieve directed goals and priorities based on their specialised knowledge and circumstances. Central decision makers often lack the detailed understanding that individual regulators possess, making Ministry-directed operational decisions inappropriate and inefficient where decisions fail to consider fully specific contexts and complexities.

Pre-empting or overriding responsible authorities' decision-making powers would also reduce their accountability for outcomes.

The discussion document mentions a shared register of health practitioners as an area for Government direction. However the Dental Council already operates a multi-profession register, as do other responsible authorities, enabling easy access to information about oral health practitioners through their public website.

The Dental Council supports creating a central, searchable public register for all health professions using existing HPI index data that already is held with the Ministry of Health as we currently interface our records weekly to this system. This would avoid the necessity of significant data migration involving over 100,000 practitioners, with typical practising histories of up to 40 - 50 years each.

Public access to health practitioner information could be enhanced if the Ministry of Health provided a webpage with links to each of the individual public registers of health practitioners.

The Ministry already provides a webpage with links to each responsible authority:

4 Do you think the Government should have the ability to appoint members to regulatory boards to ensure decisions are made with patients' best interests in mind and that the healthcare workforce is responsive to patient needs?

Yes

Comments:

The Dental Council supports appointing individuals who prioritise patient interests as members of responsible authorities. Members should be appointed based on their skill and governance experience to ensure they are equipped to make the required regulatory decisions.

The government currently has the ability to appoint lay members who bring the public voice to decision making. This power is available to the Minister under section 120 HPCAA, which gives the Minister power to appoint members of responsible authorities and includes a public notification process that enables suitably qualified and patient-focused individuals to be identified and nominated through implementation of a suitable screening and selection process.