

Privacy Commissioner's submission to the Health Committee on the Health Practitioners Competence Assurance Amendment Bill

Introduction

1. The functions of the Privacy Commissioner include examining new legislation for its possible impact on individual privacy. Central to that examination is the principle that policy and legislation should be consistent with privacy rights unless there is very good reason (and evidence) to override those rights.
2. The Health Practitioners Competence Assurance Amendment Bill (the Bill) seeks to implement recommendations from the 2009 and 2012 reviews of the Health Practitioners Competence Assurance Act 2003 (the Act) to clarify its interpretation and improve its operation.
3. This submission primarily focuses on Clause 30 of the Bill that inserts new sections 157A to 157I into the Act. These new sections provide for the issue, publication, and review of naming policies. I also make reference to changes made to Clause 29 as a result of comments made by my Office during consultation with the Ministry of Health on the development of this Bill.

Naming health practitioners

4. I support the rationale to make regulatory authority decision making more transparent by requiring those authorities to publish a naming policy. Subsection 157B(3) sets out what must be included in the policy. This includes setting out the circumstances, principles, criteria and procedures to be followed before a health practitioner whose competence, ability, or conduct is investigated may be named.
5. A distinction needs to be drawn between naming health practitioners who have been subject to adverse rulings and those where the complaint was not upheld. Naming can tarnish a health practitioner's reputation even if an authority reaches a favourable ruling, as an allegation while unproven will always leave some people with lingering doubts.
6. To prevent an authority inadvertently tarnishing a health practitioner's reputation by naming them, I recommend that section 157B is amended to provide that naming a health practitioner where the complaint was not upheld can only be undertaken under the naming policy with the authorisation of that practitioner.

7. The naming policy should not preclude an authority from naming a health practitioner with their authorisation. In some situations publishing details may have the beneficial effect of enabling the health practitioner to publicly clear their name and enhance public confidence.

Information about health practitioners

8. Clause 29 of the Bill will insert new section 134A into the Act. New section 134A requires authorities to provide to the Director-General of Health information relating to health practitioners with current practising certificates who are registered with the authority for the purposes of workplace planning and development.
9. During the development of the Bill, my office noted that clause 29 lacked constraints on the subsequent retention and/or use of the information about health practitioners collected by the Director-General. We considered that if the information was to be used for aggregated purposes it would be appropriate to specify in the Bill that the information will not be published in an identifiable form. This would give practitioners confidence their information will not be misused.
10. I was pleased to note that the Ministry of Health acted on this advice and new subsection 134A(4) was added as follows:

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.*

Conclusion

11. I support the rationale to make regulatory authority decision making more transparent by requiring those authorities to publish a naming policy. However, I consider that a distinction needs to be drawn between naming a health practitioner who has been subject to an adverse ruling and those where the complaint was not upheld.
12. I recommend to the Committee that section 157B is amended to provide that naming a health practitioner where the complaint was not upheld can only be undertaken under the naming policy with the authorisation of that practitioner.
13. I do not seek to speak to this submission but would be pleased to appear before the Committee should the Committee find that helpful in its consideration of this Bill.



John Edwards
Privacy Commissioner