

27 November 2007

Ms Sandra Cumming  
Health and Disability Systems Strategy  
Ministry of Health  
P O Box 5013  
WELLINGTON

Dear Ms Cumming

**Consultation on proposal that Speech-language Therapy and Clinical Physiology become regulated professions under the Health Practitioners Competence Assurance Act 2003 ('HPCAA')**

Thank you for the opportunity to comment on the proposal that that Speech-language Therapy and Clinical Physiology become regulated professions under the HPCAA.

**Background**

The Health and Disability Commissioner Act 1994 (the HDC Act) established the Office of the Health and Disability Commissioner, for the purpose of promoting and protecting the rights of health and disability services consumers. The rights of consumers and corresponding obligations on providers of services are set out in the Code of Health and Disability Services Consumers' Rights (the Code), which came into force in July 1996.

The focus of the HDC Act and Code is on the quality of care provided to health and disability consumers. The competence of health and disability services providers has a direct effect on the quality of care consumers receive from those providers. The HPCAA aims to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions. Accordingly, we support the regulation of Speech-language Therapists and Clinical Physiologists under the HPCAA, as a positive step towards achieving safe, competent care for consumers.

The consultation document asks a number of specific questions. As some of the issues fall outside my jurisdiction, I have focused on the benefits of regulation from the perspective of this Office.

**Speech-language Therapy**

In my opinion, the services provided by Speech-language Therapists fall within the definition of "health service" under the HPCAA. In particular, the identification and treatment of communication and swallowing disorders is clearly a service provided for the purpose of assessing, improving, and managing the physical health of individuals.

In the past, I have taken the view that Speech-language Therapists are “health care providers” under the HDC Act and are therefore subject to my jurisdiction. As health care providers, Speech-language Therapists are subject to the duties and obligations set out in the Code. This Office has received four complaints about Speech-language Therapists since 1 July 1996. While none of these complaints resulted in a finding that there had been a breach of the Code, the complaints raised issues about:

- The attitude of a Speech-language Therapist contracted by ACC to provide speech language rehabilitation services. An investigation was undertaken into this complaint but the Speech-language Therapist was not found in breach of the Code.
- The appropriateness of the relationship between a Speech-language Therapist and her 16-year-old male client. No action was taken on this complaint, due to lack of consumer support.
- The qualifications of a Speech-language Therapist acting as the managing director of a rehabilitation and assessment company. No action was taken on this complaint, as the matters complained about did not reveal an apparent breach of the Code.
- The appropriateness of disclosure of personal health information by a Speech-language Therapist. This complainant was referred to the Privacy Commissioner.

*Risk of harm to the public*

In questions two and three you ask about the risk of harm to the public, and the nature, frequency and severity of the potential risk. I would endorse the comments of the New Zealand Speech-language Therapists Association (NZSLA) that the public is at risk of harm from Speech-language Therapists who are not competent and fit to practise. As outlined in the Consultation Document, there is a potential for the consumers to be harmed both physically and mentally by Speech-language Therapists providing poor quality services.

*Public interest*

I consider that it is in the public interest that the profession of Speech-language Therapy be regulated. Regulation would provide the public with a reliable, current source of information regarding standards to be expected of the profession and allow identification of competent and qualified providers.

From the perspective of this Office, regulation of Speech-language Therapists under the HPCAA would significantly improve the range of options available to protect consumers when faced with serious complaints about a Speech-language Therapist’s competence or fitness to practise. Currently, if there has been a serious breach of the Code, the Commissioner can refer the matter to the Director of Proceedings. At present, proceedings can only be brought against Speech-language Therapists before the Human Rights Review Tribunal (HRRT), where the remedies available are a declaration that there has been a breach of the Code, an order restraining the practitioner from continuing to engage in conduct that was the subject of the breach (i.e. in relation to that consumer), and damages. The focus of the HRRT is the rights of the individual, rather than issues of public safety. Unlike the Health Practitioners Disciplinary Tribunal, the HRRT has no power to impose conditions on practice, to suspend from practice, or to ban the Speech-language Therapist from continuing to provide services to the public.

If Speech-language Therapists were registered health practitioners, the Director of Proceedings would be able to initiate proceedings in the Health Practitioners Disciplinary Tribunal. This is advantageous as it means that, in appropriate circumstances, Speech-language Therapists may be subject to disciplinary action and/or restrictions on their practice. If Speech-language Therapy was a health profession under the HPCAA, it would also be possible for this Office to refer Speech-language Therapists to their responsible authority for competence reviews to be initiated where appropriate. In serious cases, the practitioner could be suspended from practice, pending the outcome of the investigation. These mechanisms would be positive measures to protect health and safety of members of the public.

### **Clinical Physiology**

In my opinion, clinical physiologists (cardiac, respiratory, and sleep physiologists) fall within the definition of “health service” under the HPCAA. The tasks described on page 16 of the Consultation Document primarily relate to assessing and improving physical health, for example the assessment of a patient’s heart, lungs or sleep using diagnostic and therapeutic equipment. While there is no record of any complaints received by this Office about Clinical Physiologists, I consider that Clinical Physiologists providing diagnostic or treatment services would fall within the definition of “health care provider” under the HDC Act. For the reasons set out above in relation to Speech-language Therapists, I consider that it is in the public interest that cardiac physiologists, respiratory physiologists, and sleep physiologists be regulated under the HPCAA. In particular, the potential for Clinical Physiologists to harm patients through provision of services (which include invasive procedures, the use of drugs, and technical diagnoses) suggests a need for measures to protect health and safety of members of the public. Regulation under the HPCAA would allow identification of competent and qualified providers, and provide mechanisms for preventing poorly performing Clinical Physiologists from practising.

### **Conclusion**

In my view, it is in the public interest for Speech-language Therapy and Clinical Physiology to be regulated as health professions under the HPCAA, as this would provide tools to ensure the competence of practitioners and the safety of consumers. Agreed benchmarks throughout the profession in regards to qualifications, standards and competencies would allow consumers to identify those providers who are competent to provide these services. Professional standards and knowledge of the Code are also likely to increase if all Speech-language Therapists and Clinical Physiologists are subject to continuing educational requirements.

I trust that these comments are of assistance. Please contact Legal Advisor Sarah Parker on (04) 494 7929, or via email at [sparker@hdc.org.nz](mailto:sparker@hdc.org.nz), if you have any further queries.

Yours sincerely

Ron Paterson  
**Health and Disability Commissioner**