

REGULATION

Where are we today?

Healthcare professions are recognised by governments and the public as having defined scopes of practice and expertise that require predetermined levels of education and competencies. Recognition of scope of practice and required education affords the rights and responsibilities associated with earning a living from delivering healthcare services.

In New Zealand, 21 health professions are registered under the HPCA Act, 2003. These are: chiropractic (**Chiropractic Board**); dentistry; dental hygiene; clinical dental technology; dental technology; dental therapy (**Dental Council**); dietetics (**Dieticians Board**); medical laboratory science, anaesthetic technology (**Medical Sciences Council of New Zealand**); medical radiation technology (**Medical Radiation Technologists' Board**); medicine (**Medical Council**); midwifery (**Midwifery Council**); Nursing (**Nursing Council**); Occupational Therapy (**Occupational Therapy Board**); Optometry and optical dispensing

(**Optometrists and Dispensing Opticians Board**); Osteopathy (**Osteopathic Council**); Pharmacy (**Pharmacy Council**); Physiotherapy (**Physiotherapy Board**);

SELF REGULATION PROTECTS THE PROFESSION

WHEREAS

REGISTRATION PROTECTS THE PUBLIC.

BUILDING TRUST IN A PROFESSION REQUIRES EXTERNAL REGULATION.

SELF REGULATION BY PROFESSIONAL ASSOCIATIONS CO-EXISTS WITH MANDATORY NATIONAL REGISTRATION.

Podiatry (**Podiatrists Board**); Psychology (**Psychologists Board**); Psychotherapy (**Psychotherapists Board**).

Decisions as to which professions to include are made by the Ministry of Health and Health Minister.

Anyone practicing in a registered profession has to register with the board. Registration is mandatory, not voluntary.

Registered professionals are listed in the online public register and qualifications can be verified with a simple search by name.

Audiology, as a result of never having been registered is currently not regulated to the standard of other comparable, but more well-established professions such as optometry, occupational therapy and dentistry. Speech pathology and dietetics are two other fields that, similarly to audiology, are taught at university, but fall outside of the mandatory regulatory framework.

This is not to say that registration has not been discussed within the profession. A recent press release from the New Zealand Audiological Society indicated that "the NZAS has sought registration of the profession of audiology...since 1974".

Self-Regulation: Is it enough?

Audiology is currently a self-regulating profession in New Zealand.

Funding and subsidies for hearing aids are regulated by the Ministry of Health via **Accessible**. In addition, the Accident Compensation Corporation (ACC) provides some funding help dependent on percentage of hearing loss, caused by occupational noise, medical misadventure or accidental loss. In 2011, the Ministry of Health introduced a Hearing Aid Services Notice under section 88 of the NZ Public Health and Disability Act, 2000. This notice sets out the requirements under which audiologists (who are Approved Assessors under the Ministry of Health's Disability Support Services Assessor Accreditation Framework) and audiology providers can make claims and applications for hearing aid funding and subsidies. However, the profession itself is not regulated, (apart from "self-regulation").

The MOH is currently under strong pressure to recognise audiometrists (hearing aid technicians) and audiologists equally. Section 88 does not make clear any differences between the two occupations, and the public

may not understand the difference, as most regulation relates to device selection and fitting – the one area that is common to audiologists and audiometrists. Section 88 however offers no provision for individualized tailored rehabilitation programs based on a comprehensive audiological diagnostic assessment – which is the role of the audiologist.

Any person who wishes to set up an audiology-related business in the private sector is free to do so.

There is no protection of title for audiologists, meaning that anyone, with no qualification, can call themselves an audiologist with no penalty.

Audiologists and audiometrists are not required by law to belong to a professional association.

The New Zealand Audiology Society is a professional association with voluntary membership.

Full membership of the NZAS is a requirement for those wishing to access Ministry of Health and ACC funding but those wishing to work in the field of audiology without

accessing public funds need not belong to any professional association or hold qualifications.

Professional associations can regulate only their own members. They can theoretically expel a member from their association on the grounds of unethical behaviour and non-adherence to their code of ethics but cannot stop them from practicing.

Professional associations cannot interfere with service providers who employ their members, or in any way control the practices of service providers who are not their members.

Self-regulation is frequently perceived to allow for the "closing of ranks". Many professional associations who comment on the behaviours of their members are accused of protecting their own members rather than for the general good of the public. This is to be expected and is reasonable in the case of healthcare practitioner bodies where members are also regulated by external, registration bodies.

For example, if a complaint is lodged against a medical practitioner, that complaint would be investigated by the Medical board that is overseen by the HPCA. That board is made up of appointed (not elected) members who represent both the medical profession and the public. Conflicts of interest of board members are determined by HPCA, not by the interested parties as in a self-regulation system.

Complaints against members of a self-regulated profession are usually dealt with by members of the association, or people with links to members of the association. This raises a potential conflict of interest which may sometimes not be consciously acknowledged or understood. Investigation of complaints in a self-regulated environment has the potential for bias, as complaints are

made against individuals who are responsible for the choice of the board members who deal with complaints.

Investigation of complaints against members of a registered profession is potentially less biased, which engenders public trust. The safety net for the public is wider with registration than it is with self-regulation alone. While in New Zealand the Disability Commissioner will look at complaints, in practice few with complaints take them as far as the Commissioner. An individual who practices a registered profession has to register with the registration board. If the registration board decides they are unfit for practice, they have to cease practicing.

Should a complaint be lodged by the public against a registered practitioner, that

complaint might also be investigated by any professional body to which that individual chooses to belong. They might also be expelled from the professional association. They cannot be prevented from practicing the profession by the professional association, but they can be expelled from the membership of that group.

Professional associations may set standards for their members that are different to those set by registration boards. This means that it is possible for a particular practitioner to be found eligible for membership of a professional association, but not allowed to practice by the board, or vice-versa.

Public perception that individual audiologists have multiple interests due to commissions paid on hearing devices, sometimes undisclosed, has been exposed in the media, making public the discomfort that many audiologists report with current models of remuneration, clinic policies that include sales targets, restrictions of consultation time to fixed quotas, discounting on hearing device costs and preferred supplier agreements that are not typically transparent.

The NZ Audiological Society's code of ethics and standards of practice do not directly address the potential real or perceived conflicts of interest issues facing audiologists in clinical settings. Recent adjustments to Section 88 (CA3(2)) also require that audiologists and audiometrists disclose commissions and ownership by manufacturers of their clinics. However, enforcing this may be difficult, unless independent auditing of clinics is undertaken.

Separation of the profession from industry through declaring and regulating relationships between the two is a first step towards altering the perception that audiologists' clinical judgement might be, or might be perceived to be influenced by incentives.

PUBLIC ENGAGEMENT – MEMBERSHIP AND COMPLAINTS

Registration vs self- regulation

The New Zealand Audiological Society's response to accusations of incentives as an influence on advice given by audiologists has been to urge members of NZAS to follow the Society's Code of Ethics. They also state that the NZAS has a robust complaints procedure, and that audiologists and the public must make use of this. However, what happens when audiologists fear they may lose their jobs if they do not fit certain hearing aids, or fear retribution if they make a complaint? Quite apart from this, NZAS members are not the only people who can fit hearing aids, or call themselves audiologists.

As a healthcare profession that is unregistered, the public has no way of knowing who is

fully qualified in audiology and who is not. Neither can the public be sure that their audiologist does not accept incentives or commissions.

The professional associations that are recognised by government for funding purposes (NZAS, and now the Audiometrists for subsidy purposes) do not to publish membership lists that shows who is currently practicing clinically, making it impossible for the public and Government to verify the qualifications and professional standing of practitioners.

At the core of self-regulating professional associations is that members decide what

constitutes acceptable professional behaviour. Members of the NZAS are expected to address any concerns with the party they have identified as possibly engaging in professional misconduct. To start that process, the individual has to know if the person they suspect is in fact a member of the association. They should also be free of fear of any form of retribution from more powerful or longer-established members of their own association, and feel confident that the complaints board is truly independent, with no links to either competing business interests or other members of the association.

RISK?

Does audiology pose a risk to the public?

The reason cited for Audiology not being included as a registered profession in New Zealand includes a perception that the public is not put at risk of physical harm audiologists. Demonstrating "Risk of Harm" is one of the criteria for becoming a registered Health Profession.

Audiologists might reasonably be assumed to pose little risk of physical harm to their patients. However, financial or psychological harm are two types of risk to the public which might be minimized through registration.

Audiologists necessarily have a close association with the hearing device industry which parallels that held between the medical profession and the pharmaceutical industry. That relationship is regulated in order to ensure public trust that the medical profession is not influenced in its clinical judgement by incentives and influence from industry.

Although perhaps not a perfect system, nonetheless, regulation around this issue forms a significant aspect of regulation of the medical profession.

The range of services that audiologists deliver has been obscured by the marketing of products via audiology clinics.

The public is not well informed as to the differences between audiologists, audiometrists, hearing aid distributors or online and retail stores (such as pharmacists or other businesses) that sell hearing devices direct to the public.

Relationships with industry are an integral element of audiological practice, but as an emerging profession with few guidelines to follow, many of those relationships have not been transparent, leaving the public unsure of the difference between the hearing device industry and the profession of audiology.

Relationships that audiologists hold with industry have not, to date, been clearly defined, disclosed, constrained or regulated. These relationships are known to be of concern to patients, audiologists and other stakeholders, having been the topic of recent public scrutiny in the media. Transparent and regulated relationships are needed between audiologists and all stakeholders in order to engender public trust that hearing devices are recommended on the basis of clinical need, and not to meet sales targets, earn commission or meet a key performance indicator for managers.

Challenging notions of risk and need for registration for healthcare practitioners can be demonstrated through engagement with consumer groups, many of whom have concerns about standards of service delivery available, perceived or actual financial exploitation and a lack of transparency in the practice of audiology and related fields.

NATIONAL MANDATORY REGISTRATION

Who decides?

In order to be considered for regulation under the HPCA Act, the audiology profession must submit a formal application to the Ministry of Health. This will include all of the information required to determine whether audiology meets the criteria for statutory regulation.

Any lobbying to the minister would be best achieved through a combined approach from professional association, patient / consumer groups and the public.

HOW IS REGISTRATION ACHIEVED?

The need for regulation is based on criteria regarding safety, under the HPCA Act. The process for a profession to become regulated is outlined below as follows.

- Meet with Health Workforce New Zealand in the National Health Board of the Ministry of Health to discuss issues when considering applying.
- The Ministry receives an application from the professional body or bodies.
- The Ministry of Health undertakes a preliminary assessment of the application and seeks further information if required.
- If the Ministry accepts that the application makes a robust case, it convenes an expert panel to consider the application. This includes an independent assessment of whether the public is at risk of harm and whether it would be in the public interest to regulate the health service.
- Subject to the Minister's agreement, the Ministry of Health undertakes a public consultation process and analyses submissions.
- If necessary, discussions may be held between the professional bodies and existing responsible authorities to seek agreement on whether the proposed new profession can be included in an existing authority.

Media attention has been given to relationships between industry and audiology, and the operations of clinics to meet hearing aid sales targets and pay commissions to audiologists.

Supporting external regulation through national mandatory registration of audiologists would promote audiology as a profession that welcomed public scrutiny and external regulation.

A professional association that supports and promotes national mandatory registration for all healthcare practitioners promotes the integrity of its own members.

- The Ministry of Health provides advice to the Minister of Health regarding whether the profession should be regulated and the appropriate responsible authority to regulate it. If agreement has not been reached regarding an appropriate responsible authority, the Minister may assign the new profession to an existing responsible authority.
- If he agrees with the proposal, the Minister makes a recommendation to the Governor-General.
- An Order in Council is prepared.
- The profession joins/establishes a responsible authority.

One way to make registration of audiology easier and cheaper would be to register under the auspices of an already existing Registration Board. At least one existing board has already expressed a willingness to do this, and there may be others.

WHAT WOULD HAPPEN TO EXISTING PROFESSIONAL ASSOCIATIONS IF AUDIOLOGY BECAME A REGISTERED PROFESSION?

WHAT WOULD REGISTRATION COST EACH AUDIOLOGIST?

The running costs of registration boards are covered by registration fees paid by the professionals who register with that board. The smaller the profession, the higher the costs to each individual. A similar number of Podiatrists are registered as might be expected to register as audiologists, were audiology to be a registered profession. The annual registration fee for practitioners in New Zealand is currently \$378.00. Given that many audiologists earn salaries in the region of \$65 000 plus, a registration fee of \$378 per annum to secure protection of title and promote public trust in the profession, is not a high figure.

Would professional associations lose membership if audiology became a registered profession?

The role of professional associations is different to that of a professional board.

Professional associations of registered professions continue to self-regulate their own members, promote the profession they represent and offer ongoing educational events for their members (and others, if they choose).

The operations of professional associations need not change when a profession becomes a registered profession.

In the case of audiology, membership arguably could be affected if funding bodies shifted their recognition from self-regulating professional associations to professional boards. However, given that boards cannot fulfil the role of providing ongoing education, identity, professional networking and promotion of the profession, it is unlikely that any relevant professional association of audiologists would lose membership as a result of registration.

KEY DIFFERENCES BETWEEN PROFESSIONAL BOARDS AND PROFESSIONAL ASSOCIATIONS

REGISTRATION BOARDS	PROFESSIONAL ASSOCIATIONS
Mandatory national registration is required in order to provide services to the public within the scope of practice established for the profession.	Membership of professional associations is voluntary. Individuals who do not qualify for membership can practice the profession without being a member. In the case of audiology, funding bodies require membership of a professional association; the NZAS.
Professional Board members are appointed for a fixed period, paid a fixed amount, represent the profession and/or the public.	Professional association boards or committees are nominated by members, elected by members in some cases. Positions are voluntary.
Interests are declared and conflicts are determined by the governing body.	Declaration of interests is made by board or committee members and conflicts are determined by board or committee members themselves.
Governance is via HPCA and standards for boards are set and monitored. Governance standards are set for all boards according to an HPCA template.	Matters are decided internally; there is very little external Governance.
Standards for the professions are set for advertising, criminal histories, reporting and complaints procedures that apply across professions.	The professional association investigates complaints against their own members for standards agreed to within the particular association.
Boards determine standards for locally and overseas trained practitioners and ongoing educational requirements.	Professional associations may set standards for their members but they cannot set standards for anyone who chooses not to belong to their association.
Boards do not offer ongoing educational activities themselves.	Professional associations offer ongoing educational activities.
Boards do not promote the professions they govern.	Professional associations promote the activities of their members, sometimes setting standards that are different to those set by a board.

SELF REGULATION ONLY VS REGISTRATION

Implications for audiologists, the profession and professional associations

Should mandatory national registration be introduced for audiologists, professional associations such as Independent Audiologists NZ, NZAS, and ANZAI would continue to self-regulate their own members under their rules of conduct and codes of ethics.

Key implications for audiologists and for individual audiologists and for the profession under the model of self-regulation via professional associations and mandatory national registration are as follows:

	SELF REGULATION VIA PROFESSIONAL ASSOCIATIONS ONLY	MANDATORY NATIONAL REGISTRATION
AUDIOLOGISTS	<p>Voluntary membership of one or more professional associations.</p> <p>Membership fees depend on which associations the audiologist chooses to belong to.</p> <p>Regulators are elected board members who self-declare their interests. Regulation of those who nominate or elect members of a board introduces a conflict of interest that is inherent in the model of self-regulation.</p>	<p>Register with a registration board and voluntarily belong to one or more professional associations.</p> <p>A compulsory cost in the order of \$600.00 per annum might be expected, in addition to membership fees of professional associations.</p> <p>Regulators are appointed board members whose conflicts of interest are decided by a third party.</p>
THE AUDIOLOGY PROFESSION	<p>No protection of title or regulation for those who choose not to belong to a professional association.</p> <p>Anyone can set up an audiology related business even with no qualifications in the field.</p> <p>Trust in the profession called into question by the practices of some, not all of which are under the control of those qualified in audiology.</p> <p>Any person who wishes to work in audiology can do so without membership of a professional association, provided they are not required to access funding from bodies that require membership of a professional body. This includes both locally and internationally qualified audiologists.</p>	<p>Protection of title and scope of practice.</p> <p>Anyone seeking to work within the scope of practice would need to register and maintain registration, adhering to standards of advertising, disclosure and conduct set by the board.</p> <p>Any person setting up an audiology practice who was not a registered audiologist could be investigated under the HPCA Act and prevented from practicing.</p> <p>Decisions about qualifications (obtained within and outside of New Zealand are decided by the board. Those who do not meet the board's criteria would not be able to practice the profession in New Zealand.</p>

WHERE TO FROM HERE?

The profession is faced with significant changes. Media attention is given to professions that self-regulate – including audiology - in particular where judgement might be perceived to be influenced by incentives.

Independent Audiologists New Zealand supports and promotes mandatory national registration for the audiology profession. This might come about by possibly forming a single board of smaller, closely aligned professions, or by being registered under the auspices of an already established registration board.

Discussion amongst members of Audiology Australia at their recent conference on Darwin indicated willingness of the members to seek national mandatory registration for audiologists. New Zealand Audiologists should not be left behind as one of the last audiology professions in the English-speaking world left unregistered.

Support for mandatory national registration would provide reassurance to members and to the public that the professional associations to which audiologists belong are concerned about public opinion and are willing to support transparent, external regulation.

Achieving mandatory national registration may take time to achieve, even with full support from all bodies. However, taking steps towards recognition of the profession through this mechanism could significantly alter public perception of audiology as a regulated healthcare profession that deserves public trust.

If the NZ Audiological Society were to agree in principle with Independent Audiologists New Zealand that national mandatory registration of audiologists would be a positive step for the profession and for the public, a coordinated effort to engage with the Minister of Health to bring the profession of audiology to their agenda will be the next step.

Prepared by Dr Louise Collingridge (Australian discussion paper)
Executive Officer, Independent Audiologists Australia
exec@independentaudiologists.net.au

And Jeanie Morrison-Low (New Zealand version, discussion paper)
MNZAS; member, Independent Audiologists New Zealand
jeanie@kapitihearing.co.nz