NEW ZEALAND MEDICAL ASSOCIATION

17 May 2010

Alison Sutherland
Ministry of Health
PO Box 504
Wellington

By email Alison_Sutherland@moh.govt.nz

Dear Alison

Legislative Barriers to Workforce Innovation

Thank you for the opportunity to comment on this document. By way of opening comment we note that the time frame given for feedback has been particularly tight and we have not had the ability to give this document as much consideration as it deserves. Our responses undoubtedly reflect this.

The Minister of Health has asked for feedback on a list of what are said to be "legislative barriers" to workforce innovation. The cover letter asks for feedback on the list and asks the following two questions:

1. Which of the barriers are the most important to deal with first in order to address significant barriers to daily practice, and why are these the most significant?
2. Are there additional legislative barriers that aren't included?

We need to state at the outset that in our view it is in-appropriate to consider these legislative and regulatory requirements simply as "barriers to innovation". They were inserted into law as measures necessary to protect the public, and they need to be considered in this light. We accept that it may be necessary to review them in the context of current evidence and international best practice; indeed we would encourage this. We also accept that reviews may well find that some need to be changed, and that some procedures or processes currently required to be carried out only by doctors may be safely devolved to other practitioners. There are implications in the document which suggest that some of these measures were put in place to protect the practice of doctors, and this is not the case. Many of the processes considered are complex, onerous and poorly remunerated, but they are carried out by doctors because they have the required knowledge and skill. This is particularly so

where differential diagnosis is required; in many situations, the breadth and depth of medical practitioners' training is needed to ensure an adequate diagnosis. There are frequently difficulties in precisely determining the cause of death in certain circumstances such as the elderly patient with multiple co-morbidities. We believe however, that doctors have the appropriate diagnostic training to provide the best assessment of the most likely cause of death in these settings. Public safety demands that extension of these tasks to other practitioners is not done without proper review, and is not just based on the expectations of other professional groups or the need to respond to short-term workforce pressures. The NZMA would be happy to be part of review processes as they occur.

Below are the NZMA's comments in relation to the list:

Specific responses to identified legislation

Legislation identified	**Comment**
Burial and Cremation Act 1964 Section 46 AA	The completion of these certificates requires the ability to diagnose the cause of death, the NICU is a complex area and although nursing staff are highly trained, their specialty is not diagnosis. The standard for diagnostic certainty for cremation is higher than for completion of death certificates alone. There are also added complexities here with regard to legal requirements of the coroner – which must be borne by the responsible practitioner – the neonatologist. We would not therefore recommend any change to this legislation in regard to who can sign the certificate. The innovation in practice needed here may be sufficient resource for the neonatologist to be able to attend to the certification in a timely manner rather than changing the standard. An alternative solution would be for secure electronic certification. The nurse however would still have to contact the neonatologist for permission to certify incineration. The issue of cremation is more complex than simple coroner's requirements, as there are community benefits from non-coroner required autopsy for epidemiological data which may require a doctor to be involved with family decisions.
Cremations Regulations 1973 Regs 7(1) and 7(1)(a)	As noted above if there is a requirement to certify a cause of death then this involves diagnosis and this is a task uniquely suited to a registered medical practitioner as they have had extensive training in diagnosis.

Mental Health (Compulsory Assessment and Treatment) Act 1992, Amendment Acts 1999 and 2003. Sections 14A(2), 29(6), 76(7), 79(10), 96(4) and 96(5)	The basis of the mental health act is one of the most significant sanctions that a community can visit on its members – restriction of freedom and liberty. There are only a few situations where these restrictions are allowed in free society, and the heavy burden and significance of compulsory treatment are surrounded by protections for the patients. In society, only judges, police, the military, medical officers of health and doctors working in mental health have the authority to activate these provisions. An erosion of these safety measures may be seen as an attack on the rights of a patient to be fairly assessed, diagnosed and have their freedoms limited by the *minimum* required for their safe treatment. The limitation of who can assess a patient by the discretion of a director of a mental health facility creates a clear line of responsibility for the benefit of the patient. We therefore believe this legislation should remain as is.
Adult Adoption Information Act 1985 Section 11	The Health implications of genetic information of relatives are complex because of the degree of uncertainty. This is a rapidly changing field and the demands of maintenance of contemporary knowledge and practice are only covered by the medical colleges. Lowering the standard would be deleterious to patients who may receive information, but could not rely on advice to be diagnostic or prognostic.
Contraception, Sterilisation and Abortion Act 1977 Section 32(1)	New Zealand does not have abortion on demand; when the legislation was drafted it was very clear on its intention. A change to abortion law to reduce the certification requirements would be a change in the standard required for obtaining an abortion. While the report states that there are problems in respect of access depending on where a woman lives, we have seen no evidence of this. The more important issue in this area is access to abortion services for women in remote areas with limited numbers of practitioners. The innovations here may involve telemedicine rather than role substitution.
Coroners Act 2006 Section 13(1)(b), 38(1), 40, 41(6) and 137	Only people who can diagnose to the level required should be able to certify death. On the other hand the certificate of "life extinct" is currently being undertaken

	in rural areas by some EMTs and Nurses with an extended scope and is reasonable. In terms of the limitations on who can attend a coroner's post mortem we believe that medical students and doctors in training should be able to attend under the supervision of a pathologist. Also, the pathologist should have a right to restrict to those who have a legal right, - it is their professional working space and they have a need and a right to control the environment for the integrity of process. It should be a requirement of a doctor to provide a report.
Coroners Regulations 1989 Section 4(1)	We have no comment.
Crimes Act 1961 Section 312D	This section is appropriate and should not be changed.
Evidence Act 2006 Section 59	This section is appropriate and should not be changed. Communications with other health professionals have different implications, although potentially these protections could be extended
Family Proceedings Act 1980 Section 169	This section is appropriate and should not be changed as communications then come under the protection of professional relationship and health information protection
Human Assisted Reproductive Technology Act 2004 Section 51	Time constraints have meant we are unable to provide feedback on this.
Judicature Act 1908 Section 100	This section is appropriate and should not be changed. If information is required and the standard is met then it should only be a person with the ability to diagnose and comprehensively report that a person should be ordered to attend. The consultation would also come under the protection of professional relationship so the freedom that is compromised is protected to a degree.
Official Information Act 1982 Section 23(2A)(b)	This section is appropriate and should not be changed. The protection here is for the patient. Any benefits of changing the law would not be related to health care or patient treatment but to a third party. Thus, removing this would decrease patient protections.
Privacy Act 1993 Section 29(1)(c)	This section is appropriate and should not be changed.
Sentencing Act 2002	This section is appropriate and should not be changed.

Section 66	In reality only the person who has made the diagnosis can do this.
Summary Proceedings Act 1957 Sections 175(1)(a) and 203 (2)(i)	These sections are appropriate and should not be changed. Only the person who has made the diagnosis can do this.
Witnesses and Interpreters Fees Regulations 1974 Schedule Clause 8	We have no comment.
Holidays Act 2003 Section 68	As has been noted in regard to other legislation, only the person who has made the diagnosis can do this. For the most part this should be a registered medical practitioner however we can see an arguable case for physiotherapists to be able to do this in respect of soft tissue injuries.
Injury Prevention, Compensation and Insurance Act 2001 Schedule 1, Pt 1, cl 7 and cl 13	These sections are appropriate and should not be changed. Only the person who has diagnosed can undertake this task. It does not limit the use of supplementary information from others and allows the doctor to be a patient advocate.
Immigration Regulations 1999 Sections 3A(4),4(2)(c), 6(2)(c), 7(2)(c), 10(2)(c), 13(2)(b) and 15(2)(b)	These sections are appropriate and should not be changed. It raises the same issues discussed above in respect of all compulsory examinations.
Labour Relations Regulations 1987 Form 25	This form is appropriate and should not be changed. It allows for the collection of epidemiological data, and therefore the protection of workers. It prevents worker exploitation.
Parental Leave and Employment Protection Act 1987 Sections 2,8A(1)(a), 9, 12,30,31 and 45(2)	These sections are appropriate and should not be changed.
Health and safety in Employment Act 1992 Sections 34-38	These sections are appropriate and should not be changed. It raises the same issues discussed above in respect of all compulsory examinations.
Children, Young Persons and their Families Act 1989 Sections 12 and 14, 47(2)(d), 49(1), 50(1), 51,52(1),53(2)and (3), 55(1), 56, 57, 96(1)(b), 178(1), 179(1)-(3), 196	These sections are appropriate and should not be changed. It raises the same issues discussed above in respect of all compulsory examinations.

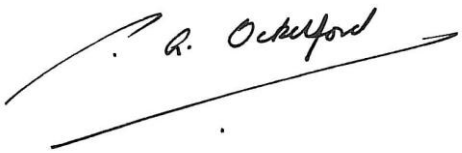
and 306(1)(d)	
Children, Young Persons and their Families (Residential Care) Regulations 1996 and 1989 Regs 10(1)(e), 53(2)(f), 56(2)(g) and Schedule 1 Form 2	Children in care have the right to medical treatment. It is appropriate that this should be a registered medical practitioner as it provides an independent person who has the child's welfare paramount.
Social Security Act 1964 Section 27G(3), 39C, 44(1) and 2, 54B, 60FD, and 69C(3) Social Security (Childcare Assistance) Regulations 2004 Regs 16(b) and 22A(b)	We do not have enough information to comment fully. If a sickness benefit is to be provided then a diagnosis will be required and a registered medical practitioner is the best trained professional to undertake this. Likewise we do not have sufficient information to comment fully on child related subsidies, but where a diagnosis of the child's illness is required then it is appropriate that this be undertaken by a registered medical practitioner.
Social Workers Registration Act 2003 Sections 55(1), 56(1) and (2), 57(2) and 84(2)(b)	These sections are appropriate and should not be changed. It raises the same issues discussed above in respect of all compulsory examinations.
Births Deaths and Marriages Registration Act 1995 and Regulations 1995 Sections 4,37,38, 40,41 and Reg 7(1)(a)(xiv)	These sections are appropriate and should not be changed. The issues in regard to death certificates are covered in the comments relating to cremation and coroners above.
Fire Service Act 1975 Section 72 and 92(2)(da)	These sections are appropriate and should not be changed. It raises the same issues discussed above in respect of all compulsory examinations.
Local Government Official Information and Meetings Act 1987 Section 22(1A)(b)	This section would seem to be consistent with the principle of beneficence and is consistent with usual practice.
Civil Aviation Act 1990 Section 27C	This section is appropriate and should not be changed. It raises the same issues discussed above in respect of all compulsory examinations.
Land Transport Act 1998 Section 18, 56(1)(d), 86(1), 89(2)(f) and 154	Most of these sections are included to protect the public and are appropriate. It raises the same issues discussed above in respect of all compulsory examinations.
Land transport (Driver Licensing and Driver Testing Fees) Regulations 1999	This regulation is appropriate and should not be changed.

Reg 17	
Land transport (driver Licensing) Rule 1999 Rules 39(1),40(1),42, 44, 44A, 44B(2), 77(1) and(2), 78, 79, 80(1), 82(1)(d), 114(1)(c) and (2) and 115	We do not have sufficient information to comment fully, but if there are different requirements for different licenses then it would seem reasonable that a diagnostician (Doctor) does this.
Land Transport (Road User) Rule 2004 Rule 7.11	This Rule is appropriate and should not be changed.- only medically required exemptions would be covered
Railways Act 2005 Section 53	This section is appropriate and should not be changed.
New Zealand Railways Corporation (Staff) Regulations 1982 Sections 12, 13 and 78	These sections are appropriate and should not be changed. It raises the same issues discussed above in respect of all compulsory examinations.
Engine drivers' Examination Regulations 1952 Section 20(1) and (3)	This section is appropriate and should not be changed. It raises the same issues discussed above in respect of all compulsory examinations.
Tram drivers' Regulations 1947 Sections 4 and 7	These sections are appropriate and should not be changed. It raises the same issues discussed above in respect of all compulsory examinations.
Veterinarians Act 2005 Sections 4, Part 3 heading, 37, 43(1)(a), 43(1)(e), 44(1), 44(6) and (7)(b), Subpart 4 heading, 55 -58, 61(1)(d) and (3)(i)	We do not have enough detail to be able to comment
Education Act 1989 Section 19(4)	This section is appropriate and should not be changed. Restriction of liberty or participation in society on health grounds should not be taken lightly and should be certified by the best qualified possible person. In remote areas where a registered medical practitioner may not be available this could be covered by nurses with an advanced scope subject to standing orders.
Education (Early Childhood Centres) Regulations 1998 Section 28(6)	It would seem that, in rare circumstances this would limit care. For example, should a very large centre exist and employ a nurse practitioner at that centre, then the "centre" might possibly be able to give more medications. The "family consent" issue however is significant.
Education (Home Based Care) Order 1992	This is appropriate and should not be changed.

Schedule Pt 3, 5	
Education (Hostels) Regulations 1972 Reg 64(3)	This regulation is appropriate and should not be changed. Restriction of liberty or participation in society on health grounds should not be taken lightly and should be certified by a registered medical practitioner or nurse with extended scope under standing orders.
School Boarding Bursaries Regulations 1972 Section 5(1)(c)	This section is appropriate and should not be changed as it relates to diagnosis. While supplementary information may be used, only a doctor should be able to synthesise the requirement to reside at a different residence to be able to achieve education "on health grounds". The issues are access to public funds, certification that the limitation extends from the health issue and that the child is well enough to participate if they live in.
Government Superannuation Fund 1956 Sections 36, 61K, 69, 71H, 88F and 88T	These sections are appropriate and should not be changed. Alterations of social entitlements on the basis of diagnosis are only changed if the diagnosis or prognosis changes, these are medical assessments – the consequences are social, but the assessment is medical.
Government superannuation Fund Regulations 1995 Reg 5	As above
War Pensions Regulations 1956 Regs 35(2) and 42	These sections are appropriate and should not be changed.
Maori Community Development Act 1962 Section 33	This seems to be an odd piece of legislation and we are unsure of its background.
State Sector Act 1988 Section 82	This section is appropriate and should not be changed. These are critical governance roles and relate to public safety in an indirect way. This is not a compulsory examination, and the applicant could decline. It does not seem unreasonable that if an exam is required then the standards of medicine are applied.
Alcoholism and Drug Addiction Act et al	Current review – no other comment
Health Practitioners Competence Assurance Act 2003	Current review – no other comment
Medicines Act 1981	Current review – no other comment
Misuse of Drugs Act et al	Current review – no other comment

We are more than happy to discuss the above further with you should you wish.

Yours faithfully



Dr Paul Ockelford
Acting Chair, NZMA