



SUBMISSION OF THE FREE SPEECH UNION ON THE HEALTH WORKFORCE REGULATION CONSULTATION

INTRODUCTION

1. The Free Speech Union (“the FSU”) is a registered trade union with a mission to fight for, protect, and expand New Zealanders’ rights to freedom of speech, conscience, and intellectual inquiry. We envision a flourishing New Zealand civil society that values and protects vigorous debate and the expression of dissenting ideas.

SUMMARY OF SUBMISSION

2. We support the Government's aim of modernising health workforce regulation to improve access to timely, quality healthcare for all New Zealanders, but we emphasise the critical need to safeguard freedom of expression and viewpoint diversity throughout this process. Our concerns specifically focus on cultural competency mandates, regulatory board composition, public consultation mechanisms, and regulatory focus priorities.
3. To address these concerns regarding freedom of expression and viewpoint diversity, we recommend promoting voluntary cultural competence, ensuring balanced regulatory boards that include free speech advocates, establishing transparent and genuinely open consultation processes, and prioritising clinical safety based on objective standards. We believe these measures will foster a fair and open healthcare system that respects the rights of both patients and practitioners to hold and express diverse views.

SUBMISSION

Cultural Competency Mandates

4. The discussion document highlights that some health regulators currently require practitioners to meet specific cultural requirements, such as demonstrating an understanding of tikanga Māori, as part of hiring and professional standards. While cultural competence is acknowledged as an important aspect of delivering effective and respectful care in a multicultural society, there are significant free speech considerations that must be addressed in the regulatory framework.
5. We support the goal of ensuring health practitioners are equipped to serve New Zealand’s diverse communities. However, we are concerned that mandatory cultural competency requirements, especially when tied to specific ideological or political frameworks, risk infringing on practitioners’ rights to freedom of expression and belief. Requiring compelled adherence to specific cultural or ideological viewpoints as a condition of employment or certification may violate the fundamental principles of free speech.

6. Mandating that practitioners demonstrate particular cultural understandings or values can amount to, forcing individuals to affirm beliefs they may not hold. This directly undermines the open exchange of ideas and the diversity of thought that are essential in both clinical practice and academic settings. Regulatory requirements should not become de facto ideological litmus tests that restrict entry to the profession or silence dissenting views.
7. Overly prescriptive cultural mandates may deter qualified individuals from entering or remaining in the health workforce, particularly those who hold differing cultural, religious, or philosophical perspectives. This could reduce the diversity of the workforce and potentially limit patient choice, which appears contrary to the discussion document's stated aim of increasing access and flexibility.

Recommendations:

- **Cultural competence be encouraged as a professional development goal but not mandated as a rigid requirement for employment or certification. Regulatory standards should prioritise clinical safety and patient outcomes. Practitioners should be supported to engage with patients in ways that are culturally respectful and clinically appropriate, while not being compelled to affirm specific ideological beliefs. Training should enable practitioners to understand and respond to patients' diverse values and beliefs, without requiring them to abandon or suppress their own inappropriately.**
- **The inclusion of explicit protections for freedom of expression within the regulatory framework. Practitioners and educators should be free to discuss, critique, and debate cultural and clinical issues without fear of professional sanction, provided they maintain professional standards of respect and care.**

Regulatory Board Composition

8. The discussion document notes that, under current law, most members of health regulatory authorities must be health practitioners. The Minister of Health appoints these members, typically after a public nomination process. We are concerned that when boards are predominantly composed of practitioners, regulatory decisions may disproportionately reflect the interests of the profession rather than the broader public interest
9. We support efforts to broaden the composition of regulatory boards. Including members from outside the regulated profession, such as laypersons, patient advocates, and individuals with expertise in ethics, law, and can help ensure that regulatory decisions are balanced and more accurately reflect the interests of the wider community and the patients the system serves, rather than solely the interests of the profession itself.
10. While practitioner expertise is undoubtedly essential for understanding the realities of clinical practice, overrepresentation can unfortunately lead to insular decision-making and increase the risk of ideological

capture. Diverse board membership, including individuals with a strong commitment to free speech principles, can help guard against the imposition of narrow or prevailing ideological views, including those that may inadvertently restrict freedom of expression or academic freedom within the profession.

Recommendations:

- **The appointment process explicitly considers candidates with a demonstrated commitment to free speech, academic freedom, and open debate. This will help ensure that regulatory authorities are equipped to protect the rights of practitioners to express diverse viewpoints.**
- **The process for appointing board members should be transparent and open to public scrutiny. Criteria for selection should be published, and the rationale for appointments should be clearly communicated. This will help build public trust and ensure that regulatory authorities are genuinely representative and accountable.**
- **The law be amended to require a balanced mix of practitioner and non-practitioner members on all regulatory authorities. At least one member should have expertise in human rights, freedom of expression, or academic freedom.**

Public Consultation Mechanisms

11. The discussion document proposes a significant shift by requiring health regulators to consult the public on decisions regarding general rules, such as changes to scopes of practice and qualification standards. Currently, consultation is primarily with affected professions. We view this broader consultation as a potentially positive step towards ensuring regulation reflects public needs and preferences, however, it is crucial that these processes are designed and implemented in a way that safeguards freedom of expression and prevents the marginalisation of minority viewpoints.
12. We support the principle of public consultation as a valuable mechanism for ensuring regulatory decisions are informed by a broad range of perspectives, including those of consumers, employers, and wider professional groups. However, we emphasise that for this consultation to be truly effective and beneficial, it must be conducted in a manner that is genuinely open to diverse viewpoints and not merely a superficial exercise.
13. We caution against the potential for public consultation processes to be manipulated or used to advance particular ideological agendas, potentially at the expense of reasoned debate and objective evidence. Regulators must be vigilant in ensuring that all submissions are given due consideration, regardless of the views expressed, and that decisions are based on objective criteria and evidence, rather than on the perceived popularity of certain opinions. The goal should be to gather a wide range of informed perspectives, not to conduct a plebiscite that could stifle freedom of thought.
14. Crucially, public consultation should not become a mechanism for silencing minority viewpoints or for imposing the preferences of the majority on individual practitioners. The rights of practitioners to freedom of expression and belief must be actively protected and respected, even when those views are

considered 'unpopular' or 'controversial' within broader public discourse. Regulatory frameworks must not be swayed by public opinion in ways that infringe upon fundamental rights.

15. In the context of qualification requirements and professional standards, public consultation should not be used to undermine academic freedom or to impose ideological conformity on educational institutions or practitioners. Academic institutions must retain the autonomy to determine their own curricula and standards based on academic principles and evidence, and practitioners must remain free to express their views and engage in intellectual inquiry without fear of reprisal stemming from public opinion expressed through consultation processes.

Recommendations:

- **The Ministry establish clear guidelines for public consultation, ensuring that all stakeholders have an equal opportunity to participate and that all submissions are given due consideration. Regulators should be required to publish a summary of the submissions received and to explain how those submissions were considered in their decision-making process.**

Regulatory Focus Priorities

16. The discussion document highlights that regulators have often considered factors beyond clinical safety, including cultural requirements, in hiring decisions. It now suggests a welcome shift towards a patient-centred approach that prioritises the delivery of timely, quality healthcare by the most qualified professionals, within New Zealand's multicultural context. We strongly support the position that clinical safety and competence must be the paramount considerations in health workforce regulation, with cultural sensitivity and awareness being important but secondary attributes.
17. We unequivocally support the prioritisation of clinical safety and competence as the primary focus of health workforce regulation. This emphasis is essential to ensure that all patients receive safe, effective, and high-quality healthcare from practitioners who possess the necessary skills and knowledge.
18. We remain concerned that mandatory cultural requirements, particularly those that necessitate ideological conformity or compel speech, pose a significant risk to practitioners' rights to freedom of expression and belief. Furthermore, these requirements have the potential to foster discrimination and inadvertently limit the diversity of the health workforce, which contradicts the discussion document's aim of increasing access and flexibility.
19. Regulatory decisions must be fundamentally based on merit, qualifications, and demonstrated clinical competence to ensure that patients receive care from the most capable professionals, irrespective of their cultural background or beliefs. While cultural competence is a valuable attribute that should be actively encouraged as a professional development goal, it should not be mandated as a rigid requirement for entry or ongoing certification. This approach will best serve the interests of all patients by prioritising the skills necessary for safe and effective practice.

20. The regulatory framework must steadfastly protect the rights of practitioners to hold and express a diverse range of cultural, religious, and philosophical views, provided these views do not compromise patient safety or established ethical standards. Safeguarding this freedom of expression is not only a matter of fundamental rights but also fosters a more open, adaptable, and resilient healthcare system where critical thinking and diverse perspectives can contribute to improved patient care.

Recommendations:

- **The Ministry clarify that clinical safety and competence are the paramount considerations in health workforce regulation. Cultural requirements should be secondary and should not be used to discriminate against practitioners or to impose ideological conformity.**

CONCLUSION

21. Regulation should support clinical excellence, true inclusivity fostered through intellectual diversity, and open dialogue. With thoughtful implementation, it's possible to protect practitioners' and patients' individual rights while advancing equity in healthcare. Open dialogue and engagement throughout the system, with patients, and the public beyond, is critical to striking this balance.