

Kia ora koutou

As we near the release of our APC fee and disciplinary levy consultation document in late October, we continue our communications series. If you have missed any updates, you can read them on our website [here](#). Thank you to those who have sent us their questions and feedback as this helps to shape the content of our ongoing communications and the consultation document.

Our series aims to enhance understanding of Council's statutory role to protect public health and safety, the financial challenges of fulfilling this function as the Responsible Authority for pharmacists in Aotearoa New Zealand, and the rationale for Council's proposed new APC fee and disciplinary levy, which combined will be just over \$1,000 (from \$925 this year).

Reasons for the increase include: a rise in the number and complexity of notifications and complaints we are receiving in relation to pharmacists' health, conduct and/or competence to practise, the need to replenish our general and disciplinary reserves, and general inflationary pressures.

In email three, we continue to look at the steady rise in notifications and complaints, which have significantly increased Council's costs. This is why the disciplinary levy will make up the largest component of the total proposed APC fee increase. We focus on Professional Conduct Committees (PCCs) and the Health Practitioners Disciplinary Tribunal (HPDT) – their roles and the increased costs being incurred by Council year-on-year in relation to external investigations undertaken by PCCs and any subsequent HPDT hearings.

Notifications and complaints – low risk versus high risk to public safety

The Council has a statutory obligation to assess and respond to each notification it receives and always seeks to respond proportionately and in line with the assessed level of risk to the public. Where a pharmacist shows insight and willingness to improve their practice, many competence concerns are resolved through an educative approach rather than the need for statutory action.

A case considered lower risk may mean an educational letter, practice visit or professional conversation, while higher risk cases relating to a pharmacist's conduct and/or the safety of their practice may be referred by Council to the Competence and Fitness to Practise Committee to consider a competence review/programme or to a PCC to investigate when there is not enough information to hand to resolve a complaint, and/or the information is not forthcoming.

The role, functions and delegated functions of a PCC

PCC members are appointed by Council to a PCC (two pharmacists and one lay member from a pool of trained PCC members), however PCCs operate independently of Council. A PCC's delegated powers include appointing legal advisors and investigators, requiring statutory declarations, requiring people to provide relevant information not otherwise available, and receiving any evidence needed to investigate the complaint, including from the pharmacist

under investigation, their employer, those practising with the pharmacist, the complainant, and clinical experts.

After completing the investigation, a PCC must promptly reach a decision or make one or more recommendations to the Council. The investigation might reveal evidence that exonerates the pharmacist, mitigates the initial concern, or establishes aggravating factors. A PCC may then decide that the Council should take no further action; submit a complaint to conciliation where it must appoint an independent person (the conciliator) to assist the health practitioner and complainant to resolve the complaint by agreement; or it may decide to prosecute through laying a charge with the HPDT.

PCC and HPDT costs incurred by the Council

In addition to the costs and resourcing needed for our compliance team's assessment, triaging of cases, and the various actions they undertake in response to cases, substantial costs can be incurred by the Council when cases are referred to a PCC for investigation, and if the PCC ultimately decides to prosecute through laying a charge with the HPDT.

The HPDT is an independent tribunal that deals with registered health practitioners. It is funded by all Responsible Authorities. The Tribunal comprises a chairperson, three deputy chairpersons and panels comprising laypersons and health practitioners. All members of the Tribunal are appointed by the Minister of Health.

This [bar graph](#) shows the rise in new PCC cases from 2020-2024 and the number of HPDT cases. The timeline between referral by a PCC to HPDT, the HPDT hearing, and the release and publication of the decision by the HPDT can be significant and is beyond the control of Council to influence.

The Council must pay costs (e.g., legal, secretariat) incurred for external investigations undertaken by PCCs and any HPDT hearings resulting from PCC decisions. To cover these costs Council must have an adequate disciplinary reserve, which is funded through the disciplinary levy. The reserve should ideally hold a reasonable buffer against spikes in caseload (and costs) and mitigate against the potential for judicial review processes.

The Council's Disciplinary reserve – how is it funded and why is it key to financial sustainability?

The Council has set a policy that its minimum Disciplinary reserve should be \$200,000 however it is currently well below this balance.

For reasons of financial sustainability, the current Disciplinary reserve position must be built up and replenished, to cover our compliance team and external costs associated with the growing number and complexity of disciplinary matters and cases.

Council's General reserve is funded through the APC component of the fee and while currently above the policy minimum, in effect it is now subsidising the deficit balance in the Disciplinary reserve. The General reserve policy of holding a minimum of one month's general operating expense is designed to reduce the potential impact of business interruptions caused by unexpected events such as an earthquake or fire. Council's insurance policies do cover these events, but the claims process can be complex and lengthy, and Council must still meet all its financial obligations in the meantime (i.e., wages, rent and other creditors).

Costs for PCC and HPDT procedures in recent years have consistently outstripped the income collected from the annual disciplinary levies paid. Other key factors contributing to this situation are the suboptimal contributions by pharmacists to costs awarded by HPDT to Council from the outcomes of HPDT processes; and the length of time it can take to recover those costs from some pharmacists, which often requires us to initiate debt collection proceedings – incurring even more internal and external costs. All these factors have significantly depleted the Disciplinary reserve.

We have collated graphs to illustrate the increasing gap between PCC/HPDT costs incurred and the eventual recoveries from practitioners between 2005 to 2024. View [here](#).

Rebuilding our Disciplinary reserve

In previous APC fee and disciplinary levy consultations we have highlighted the ongoing budgetary challenge for the Council to replenish dwindling reserves. View the consistent decreases to our Disciplinary reserve year-on-year 2019/20 to 2023/24 [here](#).

We are mindful of striking a balance between the Council's need for financial sustainability while at the same time not overburdening the profession. Therefore, our strategy will be to incrementally rebuild our Disciplinary reserves through steady increases to the disciplinary levy e.g., the levy went from \$100 to \$150 for the 2024/25 APC year.

This rebuild is essential as forecasts predict ongoing increases in notifications and complaints (including PCC investigations and cases to be heard by HPDT). It is also essential that we ensure that the disciplinary levy set at the beginning of each new recertification year is adequate to cover these predicted costs. (Keeping in mind that under the HPCA Act the Council does have the ability to raise additional disciplinary levies from the profession during the year if caseload volumes and associated costs spike even further.)

Safer practice and working towards reducing notifications and complaints

Regulatory tools, especially proactive tools as applied by Council, aim to strengthen pharmacists' competence and safe practice. An example is regulation which ensures education programmes are undertaken to prepare pharmacists to practise in a range of settings and roles. In addition to taking a preventative approach to harm through regulatory tools, they are also used to mitigate identified risks of harm. This proactive approach can help to reduce the number and complexity of notifications and complaints in future.

As mentioned previously, it is also possible to reduce costs associated with notifications and complaints when pharmacists engage with Council and are willing to reflect on and improve their practice. This may reduce the need for statutory action and referral of a case to a PCC (which as outlined is where costs begin to increase significantly).

While we can all collectively work together to reduce the volume of notifications and complaints, it remains critical that the Council continues to be notified of concerns about a pharmacist's competence and fitness to practise to ensure public safety and to help inform our work programme so that the right regulatory tools are applied to support the credibility of the profession. Council also shares the lessons learnt on safe practice by publishing summaries of HDC decisions and recommendations in our newsletter. In sharing this information, and aligning it where possible to our competence standards, we aim to promote safe practice in the profession.

Looking forward we will continue to manage and evaluate all cases for trends, particularly identifying areas of risk of harm to establish whether any proactive measures can be put in place through our regulatory tools. We will also be further developing our case management system to enable a more effective response to notifications and complaints.

Essentially, the Council is committed to working with the profession to maintain a high standard of professional regulation that maximises pharmacists' competencies to protect the safety of the public and enhances the public's trust in pharmacists. Safeguarding public safety and supporting pharmacists' fitness to practise go hand in hand.

We hope that you are finding our communications series insightful and informative, and we look forward to continuing to connect with you on the APC fee consultation process in the weeks ahead.

Ngā mihi nui

Michael A Pead
Chief Executive