Te Poari Kaimātai Hinengaro o Aotearoa
NEW ZEALAND PSYCHOLOGISTS BOARD

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Tēnā koe Mr Clayton

The New Zealand Psychologists Board | Te Poari Kaimātai Hinengaro o Aoetearoa (the **Board**) welcomes and appreciates the opportunity to provide input into the work being done by the Ministry of Health on potential improvements to the Health Practitioners Competence Assurance Act 2003 (the **Act**).

As requested in the Ministry's email of 19 February 2025, this response relates to Parts 1, 2, 3, 6 and schedule 3 of the Act. The Board also contributed to and supports the joint response submitted by eleven of the eighteen responsible authorities (**RAs**). The purpose of this submission is to supplement the joint response.

General comment

The Board's view is that the Act remains fit-for-purpose (with a key exception, discussed below). The Act establishes a robust and well-functioning scheme for the regulation of health professionals in New Zealand. The underlying principles and purposes of the Act are still relevant. In particular the Board supports a model establishing separate RAs for the different health professions. This ensures regulation that is tailored and responsive to the changing needs and demands of the health sector.

The Board notes that the Act does not define 'serious harm.' The Board's view is that it would be beneficial to either include a definition within the Act or establish profession-specific definitions for individual RAs outside of it.

Part 3 - Section 35(1)

Section 35 of the Act requires that whenever a RA believes that a health practitioner may pose a risk of harm to the public, the RA must promptly give notice of the circumstances that have given rise to that belief to:

a. the Accident Compensation Corporation (ACC);

b. the Director-General of Health;

c. the Health and Disability Commissioner (HDC); and

d. any person who, to the knowledge of the RA, is the employer of the health practitioner.

The Board has found s 35(1) challenging in practice. This is for the following reasons:

a. Section 35(1) is mandatory – the Board *must* give notice if a health practitioner poses a risk of harm. There is no discretion for the Board to decide whether a

notification is appropriate or not when all relevant circumstances are taken into account.

b. The threshold for notification is when the Board believes a practitioner may pose "a risk of harm to the public". This is not a high threshold for a mandatory notification. This means that even if there is only a small risk of low-level harm to the public, the Board must notify.

c. The threshold for notification under s 35(1) may be inconsistent with decisions made by the Board under its Naming Policy. In accordance with the Naming Policy, the Board may decide that it will not name a pracitioner in relation to an order under the Act because, for example, the punitive effect of naming may be disproportionate to the risk posed by the practitioner. However, because there is still some risk, the practitioner is effectively still 'named' by way of a s 35(1) notification.

d. Practitioners who have been subject to s 35(1) notifications frequently object to notifications because it has potential to do permanent damage to their reputation, even though the alleged risk of harm they pose may not have been established. Practitioners have argued the damage is unfair, especially in cases where the risk of harm is low.

e. There is an inconsistency between s 35(1) and s 35(2), which gives the Board discretion to give notice to any person who works in partnership or association with the practitioner about any risk of harm to the public. When viewed in the context of the notification serving as a public safety mechanism, it may be more important for the Board to notify a practitioner's partners or associates of any risk.

f. In some cases, the requirement to notify under s 35(1) is inconsistent with the Board's decision not to take any interim action while the Board is making inquiries into the practitioner's alleged harmful conduct. In this context, a notification may feel unfairly punitive.

The Board considers that the challenges wih s 35(1) could be remedied by

- allowing RAs discretion to notifiy, rather than making the notification mandatory; or
- increasing the threshold for notification to 'risk of *serious* harm'.

The Board's view is that either or both of these remedies will mean that s 35 can be applied more consistently with other parts of the regulatory scheme (e.g. interim action and the Naming Policy) and ensure that practitioners are managed in a way that is the least-restrictive and not unduly punitive.

For completeness, and to ensure consistency if s 35(1) is amended, the Board suggests the following amendment as indicated by the square brackets to s 118 of the Act:

> to notify [, in appropriate cases,] employers, the Accident Compensation Corporation, the Director-General of Health, and the Health and Disability Commissioner that the practice of a health practitioner may pose a risk of harm to the public.

Nga mihi

Vanessa Simpson
CEO/Registrar