

10 January 2024

Clare Greasley (President)
NZ Hospital Pharmacists Association (NZHPA)

Sent via email to: nzhpa@nzhpa.org.nz

Dear Clare

Proposed Disciplinary levy and APC fee increases for 2024/25

Thank you for your feedback, observations, and questions on the proposal document for the 2024/25 disciplinary levy and APC fee.

Unfortunately, there was not enough time available prior to breaking for the Christmas holiday period to co-ordinate a meeting to discuss your submission. However, the following is to respond specifically to the points raised, and if you would like to meet, we would be happy to do so.

Clarity around increase in the disciplinary levy

Yes, disciplinary levies do vary widely across the eighteen health profession regulators and range between \$nil and \$270.25 (Medical Council¹). While seven regulators have elected not to apply a levy, it should be noted that not all health professions present the same level of risk to public health, where a practitioner's lack of fitness and / or competence to practice could potentially result in serious harm or injury to a member of the public.

As was outlined in the consultation document, Council's policy is to maintain a Disciplinary reserve against the event of particularly complex cases where investigation and legal expenses could potentially exceed the disciplinary levy funds collected annually as part of the recertification process.

Council had to progressively apply the Disciplinary reserve in recent years as only minimal increases to the annual levy were imposed to offset the impact of increasing legal costs. Costs associated with the investigation (and prosecution) of disciplinary cases can mount quickly depending on the complexities of the matters being considered.

Under the Health Practitioners Competence Assurance Act 2003, disciplinary levies are ringfenced by every regulator and are only ever used to support the internal resourcing costs associated to triaging notifications and complaints, making the necessary referrals to an independent Professional Conduct Committee (PCC) process to investigate, and then of course to cover the costs of the independently appointed Health Practitioners Disciplinary Tribunals (HPDT) to consider charges laid by the PCC and decide the cases.

In an ideal world, yes, those practitioners not meeting professional expectations would pay the full costs of managing their case. Practically speaking though, while this is a desirable perspective, it would be virtually impossible for Council to administer.

¹ Per Gazette notice 2023-gs2086

For example:

- At what point does Council advise a practitioner who is the subject of a PCC investigation (i.e., with no case yet proven) that they should pay incurred and expected costs of investigation?
- If the PCC investigation concludes there is no HPDT case to answer, then should Council refund the practitioner? If so, where does the money then come from to cover the costs incurred by the PCC in investigating the complaint / concern raised?
- Investigation and legal costs incurred in these PCC / HPDT processes are not proportionate to the available income and assets of individual practitioners.

As you will be aware the HPDT determines the awarding of costs. Council provides HPDT with details of the full costs incurred and it then determines what costs the practitioner should meet. This often starts at 50% case precedent levels and then ends, after a practitioner has presented a case on their financial position, at a level much less. Council is then obliged to collect that award when often the practitioner refuses to engage, and in some cases, we have even had to file for and commence bankruptcy proceedings.

A disciplinary levy also, is just that, a levy. It perhaps regrettably should be viewed no differently to an insurance policy premium where you pay it and hope you never need it, and you simply accept that someone else (i.e., the profession as a whole and ultimately the public) will be the 'beneficiary' of the premiums you have collectively paid.

Cost savings

Your point is noted, and we undertake to provide additional comparison and analysis material for future consultations.

As was stated in the consultation document, the proposed budget for 2024/25 is iterative and still under Council's consideration with a final decision not expected to be made until early March 2024. Formal gazetting processes, however, are required to be finalised at least a full month prior to the opening of the 2024/25 recertification period (1 March 2025), hence Council's decision to put the original budget iteration in front of the profession with the deficit intact. The intention was to clearly demonstrate to the profession that, as for previous years, the continued pressure on Council to essentially deliver 'more regulation with less' is in no way easing.

Council's Finance Assurance & Risk Management Committee (FARMC) met in late November 2023 to consider a further iteration of the draft budget. It has recommended to Council that, at a minimum, it should be approving a break-even budget for 2024/25 (i.e., a budgeted expenditure no greater than the proposed income for the same period and lower than the budgeted expenditure included in the consultation document).

Adopting this approach supports Council's long-term objective of rebuilding reserves but obviously, does not significantly improve them (i.e., much beyond say, break-even). Management is now determining where additional efficiencies and savings could be made and what the impact of these would be on the delivery of Council's regulatory work programme, in the context of both Business-As-Usual and developmental work.

Comparison with other health sector regulator fees

Council agrees that this is a useful exercise and will commit in the coming year to undertake some benchmarking of key regulatory functions (i.e. accreditation, recertification) against other health regulators with a comparable professional risk profile. As a check for ourselves we have always done some benchmarking at a high level with other health regulators, but we have not always presented this as part of the consultation. The difficult aspect to any benchmarking exercise is the impact of economies of scale where the numbers of practitioners are markedly different between the different health regulators.

Thank you again for your considered feedback Clare, it is very much appreciated.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'M. Pead', enclosed within a large, loopy blue oval.

Michael A Pead
Chief Executive