

29 November 2021

John Luke

By email: fyi-request-17419-55609b38@requests.fyi.org.nz
Ref: H202115416

Tēnā koe John

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health (the Ministry) on 1 November 2021 for follow up information regarding appointments to the Chinese Medicine Council New Zealand (CMCNZ).

You specifically requested:

May I ask how the Ministry proposed to call for public nomination for the Chinese Medicine Council. Has the term of reference of council been established? if so, can you please send me a copy. What's the pay rate for the members of new council.

Rather than a Terms of Reference (ToR), Terms and Conditions (T&Cs) were drafted by the Ministry which were included in the advertisement for CMCNZ membership on the Ministry website from 27 September 2021 to 12 October 2021. The Ministry is releasing this to you in full and this document is attached as Appendix 1 to this letter.

The T&Cs cover the primary functions of appointments to a Responsible Authority (RA) per the Health Practitioners Competence Assurance (HPCA) Act. This is a precursor to a ToR, which will be finalised by the CMCNZ once appointed.

The T&Cs include a provision on fees and allowances, which is as follows:

- All costs of regulating the Chinese medicine profession will be borne by the profession through fees charged by the new RA.
- Members of the CMCNZ are entitled to be paid fees for attendance at meetings. The CMCNZ will establish the fees paid to members. Members may be paid fees for preparation time at the discretion of the CMCNZ. It is anticipated the CMCNZ will pay for actual and reasonable travel and accommodation expenses.

Per the HPCA Act, RAs are not required to be consistent with Cabinet Office Circular CO (19) 1, Fees Framework for members appointed to bodies in which the Crown has an interest. Member fees are sourced from registration fees paid by relevant health professions regulated by an RA and are set out by the Chief Executive of the RA.

Specifically, per section 132 (5) every fee set by an authority under section 130, and every levy imposed by an authority under section 131, is payable, and recoverable as a debt due, to the authority.

There may be paid to members of each authority, any committee appointed by the authority under clause 16 of Schedule 3, and any employees or contractors of the authority, out of the funds of the authority, any remuneration (by way of fees, salary, or otherwise) and allowances and expenses that the authority from time to time determines.

Further details on fees per the legislation can be found via the following links:

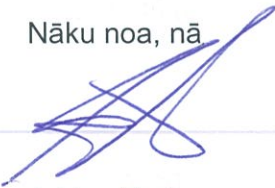
www.legislation.govt.nz/act/public/2003/0048/latest/DLM204353.html and
www.legislation.govt.nz/act/public/2003/0048/latest/DLM204356.html.

Finally, public nominations were undertaken at the same time as the public advertisement. This followed the standard process of a public advertisement both on the Ministry website and Government Jobs, as well as reaching out to caucus and nominating agencies (the Ministry for Women, Ministry for Ethnic Communities, Office for Disability Issues, public tertiary institutions, and so on).

I trust this information fulfils your request. Under section 28(3) of the Act you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Ministry website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā



Adrian Portis
Manager, Crown Entity Monitoring and Appointments
Office of the Director-General

Candidate Information on the Terms and Conditions of Appointment to the Chinese Medicine Council of New Zealand

Health Practitioners Competence Assurance (HPCA) Act 2003

Introduction

This document provides information for prospective members of the Chinese Medicine Council of New Zealand (the CMCNZ). It sets out the:

- role and functions of the CMCNZ
- composition of the CMCNZ
- terms and conditions of appointment; and
- duties and responsibilities of a member.

The Role of Responsible Authorities in Regulating Professions

Consumers do not always have enough knowledge to make an informed decision whether Chinese medicine practitioners are competent to carry out their profession. This can be a matter of concern when the actions of an incompetent practitioner may impact on the health and safety of consumers. Regulation of a profession is one way of providing consumers with information on a practitioner's competence. It ensures that only practitioners who have demonstrated that they meet the minimum standards for entry to a profession can use a particular protected title.

A wide range of health and disability sector professions are regulated through legislation to protect the consumers of health services. The HPCA Act establishes responsible authorities for the purposes of determining the competencies required for safe practice and registering practitioners who demonstrate they possess these competencies. The CMCNZ is one such responsible authority.

Individuals appointed to the CMCNZ have a range of experience, from first-time appointees with little or no experience as a member of such authorities to members with extensive experience. The CMCNZ draws considerable benefits from having a diverse membership with a range of skills, attributes, and experience.

Functions of the CMCNZ

The CMCNZ is an independent statutory authority established under section 114 of the HPCA Act. The purpose of the Act is to protect the health and safety of members of the public by providing mechanisms to ensure that health practitioners are competent and fit to practise their professions.

The status and functions of the CMCNZ are set out in sections 117 to 119 of the HPCA Act. As they relate to the CMCNZ, these functions are to:

- prescribe the qualification required for scopes of practice within the profession, and, for that purpose, to accredit and monitor educational institutions and degrees, courses of studies, or programmes
- authorise the registration of Chinese medicine practitioners under this Act, and to maintain registers
- consider applications for annual practising certificates
- review and promote the competence of Chinese medicine practitioners

- recognise, accredit, and set programmes to ensure the ongoing competence of Chinese medicine practitioners
- receive and act on information from any person about the competence of Chinese medicine practitioners and, if it is appropriate to do so, act on that information
- notify employers, the Accident Compensation Corporation, the Director-General of Health, and the Health and Disability Commissioner that the practice of Chinese medicine practitioners may pose a risk of harm to the public
- consider the case of Chinese medicine practitioners who may be unable to perform the functions required for the practice of the profession
- set standards of clinical competence, cultural competence (including competencies that will enable effective and respectful interaction with Māori), and ethical conduct to be observed by Chinese medicine practitioners
- liaise with other authorities appointed under this Act about matters of common interest
- promote and facilitate inter-disciplinary collaboration and co-operation in the delivery of health services
- promote education and training in the profession
- promote public awareness of the responsibilities of the authority
- exercise and perform any other functions, powers, and duties that are conferred or imposed on it by or under this Act or any other enactment.

Composition of the CMCNZ

The HPCA Act states in section 120(2) that the CMCNZ will comprise a majority of members who are health practitioners and two laypersons (if the CMCNZ has eight or fewer members) or three laypersons (if the CMCNZ has nine or more members).

Individuals appointed to the CMCNZ include laypersons and health practitioners who practise Chinese medicine, such as acupuncture, herbal medicine, and Tui na massage. Future additions to the workforce will be determined by CMCNZ.

Consumer Constituency

The consumer constituency of the CMCNZ includes people who use Chinese medicine services and those with an interest in the safety of the general public. Safe practices of Chinese medicine practitioners are the paramount concern of the CMCNZ.

Appointment as a Member of the CMCNZ

In making yourself available to be considered for appointment, please ensure:

- there is no conflict of interest which would preclude your appointment (eg, being an Executive member of a related professional association); and
- you are available to serve for a term of office of up to three years.

As a member of the CMCNZ you will be expected to follow the terms and conditions set out below.

Terms and Conditions of Appointment

CMCNZ members are appointed by the Minister of Health for a term of up to three years, by notice in the Gazette. Members may be reappointed from time to time but may not be appointed for more than nine consecutive years.

Members may decide not to continue office at any time, in which case if they must inform the Minister of Health in writing.

The Act states that appointed members are considered to have vacated their office if they die or are adjudged bankrupt under the Insolvency Act 1967. The Minister of Health may at any time remove members from office on the grounds of:

- inability to perform the duties of the office
- neglect of duty
- misconduct, proved to the satisfaction of the Minister
- the member's performance on the CMCNZ is inadequate (this requires the concurrence of the CMCNZ, by notice given to the member).

Duties and Responsibilities of a Member

This section sets out the Minister of Health's expectations regarding the duties and responsibilities of a person appointed as a member of the CMCNZ. This is intended to aid members of the CMCNZ by providing them with a common set of principles for appropriate conduct and behaviour and serves to protect the CMCNZ and its members from being exposed to legal challenges.

As an independent statutory body the CMCNZ has an obligation to conduct its activities in an open and ethical manner. The CMCNZ has a duty to operate in an effective manner within the parameters of its functions as set out in section 118 of the HPCA Act.

General

CMCNZ members are accountable to the Minister of Health (and through the Minister of Health to the public of New Zealand) for ensuring that Chinese medicine practitioners are competent and safe in their practice. The functions of the CMCNZ, set out in section 118 of the HPCA Act, provide the parameters within which the CMCNZ operates.

Members attend meetings and undertake CMCNZ activities as independent people responsible to the CMCNZ as a whole and do not act as representatives of professional organisations or interest groups. This is especially important because members may be party to decisions which conflict with the views of such other organisations.

Members are free to express their own views within the context of meetings but **must** publicly support a course of action decided, or, if unable to do that, must not publicly comment on those decisions.

While it is not the role of members to represent any group (health profession or otherwise), all members are expected to contribute equally to achieving the purpose of the CMCNZ; that is, to protect the public and incorporate the perspectives of all members and sectors of the public and to ensure that decisions are responsive to the cultural diversity of New Zealand.

There is an expectation that CMCNZ members will make every effort to attend all CMCNZ meetings and devote sufficient time to become familiar with the affairs of the CMCNZ and the wider environment within which it operates.

CMCNZ members may also be required to serve on one or more CMCNZ committees or working groups.

Legislation and Conflicts of Interest

It is important that CMCNZ members have a common understanding of their role as a member in order that decisions can be reached within the spirit of the governing legislation, namely, for the purpose of protecting the public through the regulation of Chinese medicine practitioners.

Members will be expected to become familiar with, and operate according to, the HPCA Act. In addition, members of the CMCNZ are expected to be familiar with, and operate according to the:

- Principles of natural justice and administrative law
- Health and Disability Commissioner Act 1994
- Health and Disability Services Code of Consumers' Rights
- Health and Disability Services Act 1993
- Trans-Tasman Mutual Recognition Act 1997
- Privacy Act 1993
- Health Information Privacy Code 1994
- Treaty of Waitangi
- Human Rights Act 1993.
- Health and Safety at Work Act 2015

CMCNZ members should perform their functions in good faith, honestly, and impartially and avoid situations that might compromise their integrity or otherwise lead to conflicts of interest. Proper observation of these principles will protect the CMCNZ and its members and will enable public confidence to be maintained.

When CMCNZ members believe they have a conflict of interest on a subject, which will prevent them from reaching an impartial decision or undertaking an activity consistent with the CMCNZ's functions, then they must declare a conflict of interest and withdraw themselves from the discussion and/or activity. The CMCNZ will have a policy on how conflicts of interest will be identified and managed.

Confidentiality

Meetings of the CMCNZ, including agenda material and minutes, are confidential. CMCNZ members must ensure that the confidentiality of CMCNZ business is maintained.

At no time shall CMCNZ members individually divulge details of CMCNZ matters or decisions of the CMCNZ to people who are not CMCNZ members. Disclosure of CMCNZ business to anyone outside the CMCNZ must be the decision of the CMCNZ, or between meetings, at the discretion of the Chairperson of the CMCNZ, or in the case of committees, the Chairperson of the Committee (if they have the delegated authority of the CMCNZ).

CMCNZ members must ensure that CMCNZ documents are kept secure to ensure the confidentiality of CMCNZ work is maintained. Release of CMCNZ correspondence or papers can only be made with the approval of the CMCNZ.

Meetings of the CMCNZ

As the CMCNZ is just being established, it is expected that members will have a heavy initial workload and can expect to meet at least six times over the first year of appointment.

Otherwise it is anticipated the CMCNZ will meet formally four times a year. In addition,

members may be required to participate on committees established to address specific issues. It is estimated that members would spend an average of 7-15 days per year on CMCNZ business, depending on the amount of Committee responsibilities, meeting preparation and complaints issues.

Preparation prior to these meetings is required. In addition, committees and working parties can also be established from time-to-time to address specific issues that require representation from CMCNZ. These may require further face-to-face meetings and teleconferences. In general, it is unlikely that the time commitment for CMCNZ would be more than 16 days per year (unless serving as Chair).

Accountability

When carrying out its functions the CMCNZ must follow the principles of natural justice and administrative law. The CMCNZ must act lawfully, that is, the CMCNZ can only act within the limits of its powers set out in the HPCA Act. The CMCNZ must also act fairly when carrying out its functions. Per section 119 of the HPCA Act, members may be held liable for anything done or omitted in bad faith or without reasonable care. Decisions of the CMCNZ can be subject to judicial review.

In accordance with section 122A of the HPCA Act, responsible authorities are subject to five-yearly, independent reviews of their performance (against a set of prescribed standards which are based on the functions outlined in section 118 of the Act).

Fees and Allowances

All costs of regulating the Chinese medicine profession will be borne by the profession through fees charged by the new responsible authority.

Members of the CMCNZ are entitled to be paid fees for attendance at meetings. The CMCNZ will establish the fees paid to members. Members may be paid fees for preparation time at the discretion of the CMCNZ. It is anticipated the CMCNZ will pay for actual and reasonable travel and accommodation expenses.

More detailed information can be obtained from:

Steve Osborne (he/him)

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Workforce Strategy and Policy
Health Workforce Policy and Insights
Health Workforce
Ministry of Health

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