



# Protocol for decision-making principles

---

## Background

- 1 The Council's governance role is to establish the strategic direction of the Council consistent with its purpose of protecting the health and safety of the public by ensuring doctors are competent and fit to practise.
- 2 The Council has a quasi-judicial function that is distinct from its strategic governance role. This function must be exercised within the Council's powers and responsibilities under the Health Practitioners Competence Assurance Act 2003 (HPCAA). These functions relate mainly to the exercise of Council's powers of registration, competence, conduct and health in relation to a specifically identified doctor.
- 3 The Council's decision-making principles will need to reflect these differences in Council's roles. Although there are likely to be common principles for both roles, it is also likely that each role will have distinctly separate principles. The remainder of this protocol identifies common and separate principles, relevant to Council's roles.

## Common principles – governance and quasi-judicial roles

- **Accountability:**  
Council is accountable for its decisions to the public, the Minister of Health and Parliament and, in relation to the efficient use of funds to achieve its purpose under the HPCAA, to the profession. This means that the Council will consider:
  - Whether the decision is consistent with its principal purpose – to protect the health and safety of the public.
  - Whether the decision is consistent with its functions under the HPCAA ie, setting standards, ensuring competence, promoting education and training, promoting public awareness, etc.
  - Whether the decision is consistent with its values and principles as expressed in the Business Plan.
  - Whether the decision is the most efficient means of meeting Council's obligations under the HPCAA.
- **Trust:**  
Council will consider trust in key relationships when deciding governance and quasi-judicial matters. The key relationships are:
  - Between the profession and the public.
  - Between the public and the Council.
  - Between the profession and the Council.

Council will consider:

- would the decision improve the trust in one or more of these relationships?
  - What would be the impact on the other relationship(s)?
- Independence:
    - The independence of Council members is important to ensure the integrity of Council decisions. The Council does not represent the profession and Members must be free from influence from external bodies. Council will decide governance and quasi-judicial matters independently of any stakeholder interest, personal interest or relationship and professional interest or relationship. (Please also refer to Council's *Policy on conflict of interest*).
  - Inquiry:
    - Council will inquire into and assess all relevant and available information in deciding governance and quasi-judicial matters. This would include examining critically all assumptions to determine opinion and fact.
  - Consistency:
    - Council aims to ensure good decisions over time by giving consideration to earlier decisions when deciding governance and quasi-judicial matters. Council acknowledges that regulatory standards change over time and decisions will always be based on the standards existing at that time.
  - Cultural competence:
    - Council recognises that doctors in New Zealand work with a population that is culturally diverse and therefore cross-cultural doctor-patient and doctor-clinical team interactions are common. Council will itself demonstrate and continue to promote awareness amongst all doctors of cultural diversity and the ability to function effectively, and respectfully, when working with people of different cultural backgrounds.

#### **Specific principles – governance roles**

- Responsibility:
  - Council, in relation to any regulatory intervention of a strategic or policy nature, has a responsibility to the profession to engage, consider comment and feedback fairly, and to make decisions that can be effectively implemented.

#### **Specific principles – quasi-judicial roles**

- HPCAA:
  - The Council will always act consistent with the purpose, principles and specific enabling provisions of the HPCAA.
- Principles of natural justice:
  - The Council will apply the specific provisions of the HPCAA regarding providing relevant information and giving reasonable opportunity to make written submissions and be heard.
  - Proceedings of Council will be conducted so that they are fair to all parties.
  - The Council will only take into account relevant considerations and extenuating circumstances and ignore irrelevant considerations.

- All members of Council should act without bias (refer to Council's *Policy on conflict of interest*) and act in good faith.
- Risk of harm and risk of serious harm
  - The Council, in considering individual cases, will expressly apply its definitions of risk of harm and risk of serious harm. The relevant definitions are:

Risk of harm may be indicated by:

- A pattern of practice over a period of time that suggests the doctor's practice of medicine may not meet the required standard of competence; or
- A single incident that demonstrates a significant departure from accepted standards of medical practice; or
- Recognised poor performance where local interventions have failed – this does not exclude notification of serious concerns where internal review or audit is inaccessible or unavailable to the person with the concern; or criminal offending.
- Professional isolation with declining standards that become apparent.

Risk of serious harm may be indicated when:

- An individual patient may be seriously harmed by the doctor; or
- The doctor may pose a continued threat to more than one patient and as such, the harm is collectively considered 'serious'; or
- There is sufficient evidence to suggest that alleged criminal offending is of such a nature that the doctor poses a risk of serious harm to one or more members of the public.

Approved by Council: 13 May 2009  
Amended by Council: 16 May 2012