

<p><b>Auckland Regional Public Health Service</b> Rātonga Hauora ā Iwi o Tamaki Makaurau</p>    <p>Working with the people of Auckland, Counties Manukau and Waitemata</p>	<p><b>Auckland Regional Public Health Service</b> Cornwall Complex, Floor 2, Building 15 Greenlane Clinical Centre, Auckland Private Bag 92 605, Symonds Street, Auckland 1035, New Zealand Telephone: 09 623 4600 Facsimile: 09 623 4633 Website: <a href="http://www.arphs.govt.nz">www.arphs.govt.nz</a></p>
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2 November 2006

Sally Gilbert  
Environmental Health  
Communicable Disease and Environmental Healthy Policy  
Public Health Directorate  
Ministry of Health  
PO Box 5013  
WELLINGTON

Dear Sally

**Submission on the discussion document *Towards Defining Criteria for Appointment as a Statutory Officer* from the Auckland Regional Public Health Service**

1. Thank you for the opportunity to make a submission on *Towards Defining Criteria for Appointment as a Statutory Officer*.
2. This submission is from the Auckland Regional Public Health Service ("the Service"), which provides public health services for the three district health boards in the Auckland region: Auckland, Counties Manukau, and Waitemata. Further information about the Service is included later in this submission. This submission represents the views of the Service and does not necessarily represent the views of the three District Health Boards.
3. The Service understands that all submissions will be available under the Official Information Act 1982, except if grounds set out under the Act apply.
4. Any further information required on the contents of this submission can be directed to:

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## Key Points

5. The Service agrees that compliance and enforcement are an essential component of the delivery of public health, and that they require specific skills and knowledge. Compliance and enforcement, however, should be seen as one end of a continuum of activities that promote public health.
6. The Service has concerns about the proposal to extend the role of public health service enforcement officers, especially as it does not agree with the estimated resource implications of such a change.
7. The Service supports the idea of having national standards and competencies for statutory officers and, with some reservations, agrees with the proposal in the discussion document that statutory officers be either medical officers of health or health protection officers. The Service is anxious to ensure that the pathways to becoming a health protection officer are sufficiently flexible so as to accommodate the wide variety of backgrounds of potential health protection officers.
8. The Service sees the Smoke-free Environments Act 1990 (and the Sale of Liquor Act 1989) as sufficiently different to warrant separate consideration and does not feel that statutory officers should necessarily be health protection officers or medical officers of health.

## Introduction

9. The Auckland Regional Public Health Service is a regional public health service provider and works towards improving, promoting and protecting the health of people in the Auckland Region. The Service has an active commitment to working with central and local government, other health service providers, iwi and local communities to develop effective strategies to promote and protect the health of the people of the Auckland Region.
10. The Service is also the largest public health unit in New Zealand, employing over 166 staff, which includes designated and statutory officers who work under various pieces of legislation including the Health Act 1956, the Smoke-free Environments Act 1990 and the Food Act 1981.
11. These officers, along with other public health staff, work towards achieving six 'vital few' outcomes that the Service has identified as critical to achieving public health:
  - a reduction in the incidence and impact of obesity, diabetes and cardiovascular disease
  - a reduction in the incidence and impact of infectious disease
  - a reduction in the incidence and impact of tobacco and alcohol related harm
  - a reduction in the incidence and impact of cancer
  - a reduction in the incidence and impact of environmental inequalities
  - a reduction in the adverse effects of environmental hazards
12. Workforce development forms part of the activities that underpin these outcomes. Each year the Service invests considerable effort in recruiting staff and developing those staff who are already employed.

## Responses to questions in each section

### Introduction

13. The Service agrees that compliance and enforcement are essential components of comprehensive public health programmes. The Service also agrees that such activities require a high degree of skill, training and experience. Statutory officers often have to work within the realm of the court and legal systems, which use set processes and procedures. Given that the health of the public is at stake, statutory offices must have the necessary skills to perform their duties.

14. The Service feels that, among other things, statutory officers should have competence, skills and knowledge in the following areas:
- legislation interpretation (including specific knowledge of the statute being enforced)
  - risk identification and risk mitigation planning
  - investigation and chain of evidence (including exercising powers in a fair and impartial manner)
  - advocacy and facilitation of interagency collaboration
  - enforcement
  - communication in order to interact appropriately with the public and stakeholders
15. The Service believes that these competencies should also form part of the skills expected from medical officers of health and health protection officers.
16. The Service agrees with the list of risks that may arise from “under-resourced compliance and enforcement activities”. It is not clear, however, that “extending the role of statutory officers within District Health Boards to enforce a wider range of legislation” will mitigate the issue of adequate resources. In the absence of further explanation of the Ministry’s reasons for its statement, the Service believes that such extension of roles will spread the available enforcement and compliance resources more thinly and reduce the ability of the Service to respond to individual enforcement issues.

Officers appointed or designated pursuant to the Health Act 1956

17. The Service has no comments on the appointment of medical officers or the designation of health protection officers.

Officers appointed or designated pursuant to the Hazardous Substances and New Organisms Act 1996

18. The Service has sent a range of health protection officers and medical officers of health on HSNO training courses. Given the level of professional specialisation within these groups it is very difficult for all but a few to satisfy the requirement of working for a minimum period of six months under the guidance of an approved officer.

Officers appointed or designated pursuant to the Biosecurity Act 1993

19. Many of the services previously provided by public health units involving biosecurity have been taken over by other agencies e.g. the Ministry of Agriculture and Forestry. From a strategic perspective the Service questions whether the training of staff in the application of the Biosecurity Act is either desirable or appropriate.

Officers appointed or designated pursuant to the Smoke-free Environments Act 1990

20. The Service believes that the Smoke-free Environments Act, along with the Sale of Liquor Act (see paragraph 26), are sufficiently different from other public health legislation to warrant separate consideration. Although there are aspects of compliance and enforcement, which require specific skills common to other legislation mentioned, the Smoke-free Environments Act has three other considerations:

- The subjective nature of the wording of the Act (for example, the “all reasonably practicable steps” test to ensure that no smoking occurs in the area of concern) makes applying it more complicated than most other public health legislation, and makes it difficult to separate ‘compliance’ from ‘enforcement’. Specifically, enforcement officers are looking for evidence that “reasonably practicable steps” have been taken, rather than for evidence of the hazard (second-hand smoke) or the harm.
- Enforcement officers are required to investigate and enforce two distinct parts of the Act. Part 1 deals with exposure to second-hand smoke, and Part 2 of the Act concerns product regulation (including display, sale, supply, distribution, reporting, advertising and promotion of the product).

- Enforcement work can greatly enhance the health promotion activities that take place in this field and therefore they should be closely aligned. This opportunity to be proactive is much more pronounced than with most other public health legislation.

21. The Service feels that smoke free enforcement officers should be required to demonstrate that they have a certain level of skills and knowledge before being appointed. It does not, however, think that appointment should be restricted to health protection officers or medical officers of health. Such a requirement would severely limit the Service's ability to recruit and retain staff in the smoke free enforcement officer role and would present few advantages.

22. It is acknowledged that the legislation is difficult to interpret and enforce, and therefore the Service feels that smoke free enforcement officers need specialist training over and above any general training in enforcement. In addition, the Service feels that another key skill for being a smoke free enforcement officer is a sound understanding of health promotion concepts and techniques.

23. With that in mind, the Service believes that there is more than one way to demonstrate the necessary enforcement skills. A person who is a health protection officer, for example, could be assumed to have them. Another way, however, could be through attendance at specific smoke free training that incorporates enforcement aspects. The Service does have concerns about the frequency and regularity of existing smoke free training and would like to see a more regular timetable for it.

24. Although the Service notes that this document proposes that the Ministry continue to conduct controlled purchase operations itself (on page 18), this is contrary to recent discussions held between the Service and the Ministry. Therefore, the Service would also like to see guidance on conducting controlled purchase operations incorporated into the broader training on the Smoke-free Environments Act.

#### Officers appointed or designated pursuant to the Prostitution Reform Act 2003

25. The Service believes that because only a small number of medical officers of health have received this training there is a potential risk to the implementation and enforcement of this Act. Therefore, it would like to see more training offered in regard to this particular piece of legislation.

#### Other legislation not included

26. The Service has identified some further pieces of legislation that have not been covered in the discussion document:

- Under section 16 of the Tuberculosis Act 1948 is a provision for persons suffering from tuberculosis to be isolated and have compulsory treatment. The criterion for appointing staff to this enforcement role is that the person must be a medical officer of health.
- Sections 11 and 12 of the Food (Safety) Regulations 2002, medical officers of health or designated officers have powers pertaining to persons in contact with an infected person and the sale of infected food. The criteria for a person to be designated under this piece of legislation are set by the New Zealand Food Safety Authority.
- Under the Sale of Liquor Act 1989 and subsequent amendments, the medical officer of health or his or her representative must enquire into each application for a club or on-licence. Objections to the application are then lodged with the District Licensing Agency. There is no specific set of criteria for appointing staff to this role.
- The Service also employs officers designated under the Food Act 1981 who enforce a range of statutes and regulations.

#### Extending the enforcement role of public health services

27. The Service is concerned about the resource implications for any extended work and does not agree with the estimations in the discussion document. For example, in the Service's experience an investigation under the Health Practitioners Competence Assurance Act would take far more time than the average indicated by this document (six hours).
28. In addition, it is not clear why such an extension is required. The Service disagrees with the assertion that adding to the responsibilities of enforcement officers within public health units would encourage pro-active investigations and enforcement activity. In fact, the Service feels that in the absence of other factors it would stretch existing enforcement resources even further.

#### The use of regional or national enforcement coordinators

29. Given that the Service is not in favour of extending the enforcement role of public health services, it is not clear what responsibilities a regional or national coordinator would have or how they would add value to the status quo.

#### Competencies for appointment as enforcement/statutory officers

30. The Service has in the past made requests for a strategic approach to the enforcement workforce, which would take into account the differing demands of the various regulatory authorities.
31. Towards that end, the Service supports the idea of having a set of national standards and competencies for those who are to be statutory officers. It also, with some reservations, agrees with the proposal in the discussion document that statutory officers be either medical officers of health or health protection officers.
32. These reservations centre on the educational pathways that a person may take to become a health protection officer, a process that is currently not well defined. The Service has previously highlighted the risk of not having a professional body that sets standards and assesses professional competencies for health protection officers. Therefore, in the absence of such a body it is essential that these pathways remain flexible enough to accommodate the wide variety of backgrounds that potential health protection officers have. A key reason for this is to allow for sufficient levels of suitable and competent staff (see below).

### **Other comments**

#### Recruitment and retention of staff

33. As it currently stands, the Service has difficulty in hiring and retaining suitably qualified persons. One possible implication of restricting who may be a statutory officer is that, given the current (and foreseeable) job market with regard to health protection officers, this problem would be exacerbated further. This may then hamper the Service's efforts to carry out its core public health duties.
34. It is also likely to further reduce the effectiveness of the Service's efforts to increase the participation of Maori in the public health workforce. Maori are underrepresented in those qualified as health protection officers. Restrictions on who may be appointed may remove an alternative route through which Maori (and others) can enter the public health workforce and potentially gain the skills required for appointment as a health protection officer.

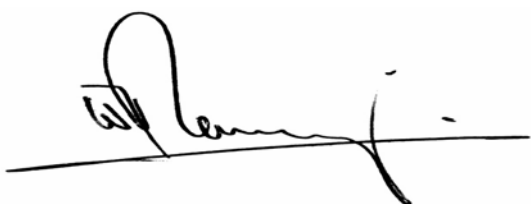
#### Frequency and availability of training

35. Although not explicitly discussed in the document, the matters raised also highlight issues around the frequency and availability of training. As has been mentioned above, the Service would like to see more of the specific training around the Smoke-free Environments Act and Prostitution Reform Act.

## Conclusions

36. Thank you for the opportunity to comment on the discussion document *Towards Defining Criteria as a Statutory Officer*. As a large employer of statutory officers, the Service agrees that compliance and enforcement are essential components of comprehensive public health programmes. It also agrees that such activities require certain skills, knowledge and experience.
37. The Service has concerns about the proposal to extend the enforcement role of public health services to include investigations under other legislation such as the Health Practitioners Competency Assurance Act. It does not agree with the premise that this would encourage proactive investigations and enforcement activity, especially as the Service does not feel that the estimated resource implications are accurate. In light of these views, the Service is not sure that having regional or national enforcement coordinators would add value to its work.
38. The Service understands and supports the desire of the Ministry of Health to develop standards around the appointment of statutory officers and towards that end, with some reservations, agrees with the proposal that such people be either medical officers of health or health protection officers. The main concern is that public health units, already faced with shortages of qualified staff, would be unable to fill positions and that this would have a detrimental effect on the provision of public health activities.
39. The Service believes that the Smoke-free Environments Act 1990 (and also the Sale of Liquor Act 1989, which is not dealt with in this document) is sufficiently different from other public health legislation to warrant separate consideration. As well as an appreciation of the subjective nature of the Act, the persons carrying out enforcement should have a sound understanding of health promotion techniques, as the integration between enforcement and health promotion is critical to a public health programme's success.
40. Finally, the Service recognises that these are important issues that deserve serious consideration. Therefore, it looks forward to the opportunity to engage in further discussions on the matters raised.

Yours sincerely

A handwritten signature in black ink, appearing to read 'William Rainger', written over a horizontal line.

William Rainger  
**Joint Service Manager**  
**Auckland Regional Public Health Service**