

# Occupational Regulation Guidelines





# Contents

<b>Occupational regulation that supports competition</b>	<b>1</b>
<b>What is occupational regulation?</b>	<b>1</b>
<b>Why is competition important in occupational regulation?</b>	<b>1</b>
Who is this guidance for?	1
<b>Striking good balances between consumer protection and competition</b>	<b>2</b>
<b>General principles for occupational regulation that supports competition</b>	<b>3</b>
<b>Careful regulatory design can help promote competition</b>	<b>4</b>
<b>Sound regulatory design</b>	<b>4</b>
<b>Useful resources for policy makers</b>	<b>6</b>
<b>Regulatory requirements can impact entry and expansion, and influence the conduct of competing providers</b>	<b>7</b>
<b>Entry restrictions</b>	<b>7</b>
<b>Conduct restrictions</b>	<b>9</b>
<b>Occupational regulatory bodies and practitioners should be alert to the risk of anti-competitive agreements</b>	<b>10</b>
<b>Useful resources</b>	<b>10</b>
<b>Practitioners should raise any concerns</b>	<b>10</b>

# Occupational regulation that supports competition

## What is occupational regulation?

Some occupations, jobs, and activities can only be done by people who have the right licence, certification, registration or qualifications. About 20% of New Zealand's workforce, across more than 100 occupations, is subject to some sort of **occupational regulation**.

Occupational regulation can take different forms. It may be through formal legal restriction – for example, some titles such as 'lawyer' and 'chartered accountant' are restricted and certain trade work can only be done by licenced tradespeople like plumbers or gasfitters.

But less formal structures, such as through voluntary membership of professional or industry bodies, or through the purchasing terms of key government agencies such as ACC or Health NZ, can impose similar requirements and restrictions.

## Why is competition important in occupational regulation?

Occupational regulation affects a wide range of services that households and businesses rely on, including a wide range of healthcare workers, chartered engineers, commercial pilots, plumbers, gasfitters and electricians, teachers and early childhood educators, and real estate agents just to name a few.

Generally, occupational regulation is about protecting the public from work being carried out incompetently or recklessly. But occupational regulation shouldn't make it unnecessarily hard to join or work in a profession or occupation, and as much as possible it should encourage competition in the supply of services to consumers.

Competition, the process of rivalry between businesses to win and retain customers, creates incentives for businesses to reduce costs and prices, improve the quality of goods and services and develop and introduce new products, services and technologies. Competition in markets is a key driver for greater value, innovation and productivity, and therefore better outcomes for New Zealanders.

## Who is this guidance for?

This guidance seeks to raise awareness of competition issues that can arise in the context of occupational regulation and offers practical advice for designing and applying occupational regulation to protect the public without unnecessarily limiting competition.

It is designed for:

- **Policy makers** – Those responsible for designing occupational regulation regimes can use the *General principles* and the *Sound regulatory design* questions and resources to help ensure suitable balances between consumer protection objectives and competition.
- **Members of regulatory bodies** – Regulatory bodies like Boards and Councils, and industry bodies make and administer rules, requirements and standards in occupational regulation. They can test current and proposed regulatory rules against the *Entry restrictions* and *Conduct restrictions* questions below to ensure they are proportionate, objectively justifiable, and do not unnecessarily restrict competition.
- **Current and future practitioners** – People working, or looking to work, in industries or jobs covered by occupational regulation can use the *Entry restrictions* and *Conduct restrictions* parts of this guidance to help identify regulatory requirements that might be limiting competition and what they can do about that.

## Striking good balances between consumer protection and competition

Occupational regulation should seek to protect the public where it is difficult for consumers to assess the quality of a service, where incompetent work could result in significant harm to health, safety, or financial wellbeing and where the general law does not give adequate protection.

But too great an emphasis on consumer protection can come at the expense of competition. Unnecessarily strict requirements can make it harder for practitioners to supply services and can increase the cost of doing business. This can discourage entry into the occupation, which may affect consumers' access to services and the prices they pay.

When considering the potential competition impacts of occupational regulation it is important to consider:

- **Governance arrangements:** the systems and structures put in place to ensure the interests of the public are served – including by promoting competition;
- **Barriers to entry:** the potential impact of regulatory requirements on entry and expansion, consumers of the services, cross-border movement of skilled people, the potential for new business models, and the potential for market development from new technologies; and
- **Conduct:** the codes, standards or rules of practice (formal and informal) around behaviour and the incentives these create for people within the occupation, including disciplinary procedures and the handling of competency complaints.



### Competition impacts quick test – do regulatory requirements:

- affect the ability of providers to enter the market and/or grow their business?
- affect the ability or incentives to compete?
- affect consumer choice and ability to switch to other options?
- create advantages or disadvantages for some providers compared to providers?

**Yes** to one or more of these signals a potential impact on competition that should be considered

# General principles for occupational regulation that supports competition

While competition is important it is not the only consideration when designing occupational regulation. Occupational regulation is generally motivated by other important goals such as ensuring minimum standards of competence and integrity. In this section we list some general principles for designing occupational regulation regimes and regulatory requirements that support competition.

- **Clear purpose and objectives:** An occupational regulation regime, and the requirements set within it, should have a clear purpose, with clearly defined objectives based on addressing identifiable and material risks of harm. This enables better analysis of the trade-offs with competition.
- **Least restrictive approaches:** Consider alternatives and least restrictive ways to achieve the purpose and objectives while also minimising the impacts on competition.
  - Different approaches to occupational regulation vary in how restrictive they are. Licensing is the most restrictive approach and typically reserved for higher-risk activities. It is followed by certification, with registration generally the least restrictive approach. 'Negative licensing', by allowing individuals to practise unless ruled out by specific disqualifying criteria (such as serious misconduct or criminal history) can be an even less restrictive option.
- **Transparency:** Reasons for deciding to introduce occupational regulation, the design of the particular regime, and the design and implementation of new rules, standards or requirements should be transparent. This means competition trade-offs are well understood, and decisions can be easily scrutinised.
- **International alignment:** Where possible, occupational regulation should aim to streamline the recognition of overseas qualifications (and potentially registrations) to reduce barriers to mobility.
- **Evidence-based, with consultation:** Regulatory measures should be grounded in clear evidence of the risks of harm and consulted on to ensure requirements are proportionate to the issues they are seeking to address. This helps avoid unnecessary restrictions that could limit entry or expansion, unnecessarily raise compliance costs or reduce innovation.
- **Cost-benefit analysis:** While protecting the public is a key objective of occupational regulation, it may be that not all risks of harm can or should be eliminated. Seeking to eliminate risks can lead to overly restrictive measures. Cost-benefit analysis can help assess whether the benefits of a regulatory measure can be expected to outweigh the costs, including the cost of compliance and potential impacts on competition. This can help with the assessment of different options to identify the approach that delivers the greatest net benefit.
- **Periodic review:** Markets and market conditions evolve. Regulatory measures should be reviewed periodically to ensure they remain necessary, proportionate to the risks they seek to address, and don't unnecessarily restrict competition.



# Careful regulatory design can help promote competition

The questions in this section provide prompts for considering whether occupational regulation is likely to support actions and decisions that encourage competition in the long-term. Considerations include the regulatory design and structure of its functions (such as rulemaking and enforcement versus industry advocacy).

## Sound regulatory design

*Is occupational regulation justified, proportionate, and set up to not unnecessarily restrict competition?*

- Occupational regulation should be grounded in a specific public interest concern, supported by evidence of actual or potential harm or risk. Restrictions should be no more than necessary to address the identified harm or risk.
- Consider whether the same outcome could be achieved through less restrictive means.
- Mechanisms such as sunset clauses, periodic reviews, or competition impact assessments help ensure regulation remains proportionate and does not unnecessarily restrict competition over time.

### CASE STUDY

#### Procurement decisions can have similar outcomes to occupational regulation

The New Zealand Audiological Society (NZAS) is the largest professional body representing audiologists in New Zealand. Membership of the NZAS is voluntary and it is not a statutory body. However, some significant government purchasers (such as the Ministry of Health) only provide funding for audiology services and equipment provided by NZAS members.

Procurement decisions can impose restrictions that prevent other practitioners (in this case, non-NZAS audiologists) from competing for an important part of the market and can indirectly confer status on a professional body as an occupational regulator.

## CASE STUDY

### Independent review of the Law Society

An independent review of the New Zealand Law Society (NZLS) in 2023 found that the combining of regulatory functions with a representative role for the legal profession creates a conflict of interest and undermines public confidence in the regulatory system. It noted that combining these functions within a regulatory body can lead to decisions that favour the profession over consumers and weakens accountability and transparency.

The review recommended structural separation of these functions, with an independent regulator responsible for licensing, complaints, and disciplinary matters. The NZLS would retain its role as a professional membership body.

The review also recommended that the institutional arrangements of the new regulator include a board with an equal split between lawyer and public members, chaired by a public member, and at least two members with strong te ao Māori insights.

*Are regulatory bodies set up to support competition?*

- Governance arrangements can influence regulatory outcomes. The composition of regulatory bodies should strike an appropriate balance between the need to have regulatory requirements set and administered by individuals with sufficient expertise, and the need to ensure that representatives of occupation do not have inappropriate control over entry and conduct. Practitioners in decision-making roles on Boards or Councils will need to put the public interest ahead of their own and the industry's self-interests.
- Embedding an objective or principle of promoting competition supports long-term decision-making that accounts for impacts on competition.
- There should be a clear separation of functions within the regime to avoid conflicts of interest. Functions such as rulemaking and enforcement should be separated from industry representation and advocacy.

## CASE STUDY

### Health authority governance risks favouring the views of practitioners

Under the Health Practitioners Competence Assurance Act 2003 regulatory authorities must have a majority of members who are health practitioners.

Balanced governance that includes independent public member presence can help ensure that regulatory decisions promote innovation and access, and do not unnecessarily restrict competition.



## Useful resources for policy makers

The Cabinet Circular, Policy Framework for Occupational Regulation (CO (99) 6), provides guidance on when it is appropriate to regulate an occupation, including the different design approaches to regulation: <https://www.dPMC.govt.nz/publications/co-99-6-policy-framework-occupational-regulation>. It provides a policy framework that:

- identifies the circumstances in which occupational regulation may be needed to protect the public
- describes the different approaches to occupational regulation to fit different situations
- lists the principles and processes for effective occupational regulation by statute.

The Ministry for Business, Innovation and Employment (MBIE) is responsible for Cabinet Circular (CO (99) 6) and offers a range of best practice guidance and advice relating to occupational regulation (for example, regarding the Trans-Tasman Mutual Recognition Arrangement or guidance on creating a registry regime: [https://www.regulation.govt.nz/assets/Resource-Documents/creating-registry-regime-guidance\\_May2025.pdf](https://www.regulation.govt.nz/assets/Resource-Documents/creating-registry-regime-guidance_May2025.pdf)).

For advice on or review of proposals, you can contact MBIE competition policy at [competition.policy@mbie.govt.nz](mailto:competition.policy@mbie.govt.nz) or the MBIE service delivery team at [OPRS@mbie.govt.nz](mailto:OPRS@mbie.govt.nz).

The Ministry for Regulation website has materials to help agencies analyse the likely impacts of regulation: <https://www.regulation.govt.nz/our-work/regulatory-impact-analysis-ria/>.

The Cabinet Circular, Impact Analysis Requirements (CO (24) 7), reinforces that regulation should not be seen as the first resort for problem solving, particularly where proposals may impair competition or the incentives on businesses to innovate and invest: <https://www.dPMC.govt.nz/publications/co-24-7-impact-analysis-requirements>.

Where competition may be affected agencies should seek advice from the competition policy team at MBIE.

Jointly with MBIE we have guidelines to help public officials factor competition into their analysis of policies and initiatives that change markets. These guidelines can help to identify competition issues early on and support approaches that maintain or promote competition in the achievement of policy goals, where it is feasible <https://comcom.govt.nz/about-us/our-policies-and-guidelines/competition-assessment-guidelines>.

# Regulatory requirements can impact entry and expansion, and influence the conduct of competing providers

Regulatory bodies like Boards and Councils are often given rule- and decision-making functions in occupational regulation regimes. Industry self-regulatory bodies sometimes take on such functions.

The regulatory requirements put in place by these bodies can impact entry into the occupation, growth and expansion prospects, and can influence the conduct of providers – some of whom may be competing for work.

This section provides a set of questions for Board and Council members to consider in relation to the regulatory ‘rules’ they make. The questions will also be useful for practitioners, both those currently working in and those looking to enter an occupation, where they are or will be subject to any restrictions those rules impose.

This section also highlights the risk of anti-competitive agreements that can arise in an occupational regulation setting, and how to avoid it.

## Entry restrictions

*Are there accessible pathways for recognising overseas practitioners?*

- There should be clear and efficient pathways for overseas qualified practitioners to work in New Zealand.
- Regulatory bodies should ensure these pathways are practical and fit-for-purpose, and look to streamline, where possible, both requirements and timeframes.

*Are there limits on the number of practitioners or businesses?*

- Unless authorised or exempt from the Commerce Act, limits on the number of practitioners that can enter the occupation are likely to be illegal.
- Implicit or explicit restrictions on practitioner numbers or geographic boundaries or territories can artificially limit supply and are a strong barrier to competition.

*Are educational requirements proportionate and is delivery accessible?*

- Minimum qualifications should reflect the competencies needed to provide the service to the public safely.
- If specific courses or degrees are mandated, the capacity and frequency (availability) of those courses or degrees should be considered as potentially limiting the number of applicants and new practitioners.
- Ongoing training requirements can impose costs and create barriers to continued practise. Professional development requirements should be linked to needs for ongoing competence.

*Are experience requirements objectively justifiable and non-restrictive?*

- Requiring supervised practice or apprenticeships creates dependencies on current practitioners. Have possible incentives for current practitioners to deter or delay the entry of potential competitors been considered?

## CASE STUDY

### Scopes of practice and competition in ophthalmology

The Royal Australian and New Zealand College of Ophthalmologists (RANZCO) is recognised by the Medical Council of New Zealand as the medical college responsible for the training and professional development of ophthalmologists, a prerequisite for registration and independent practice.

In 2023, RANZCO issued a letter counselling its members against facilitating optometrists to perform two types of laser eye surgeries. This was despite a legal change in optometrists' scope of practice in 2022 that enabled optometrists to perform specific surgical ophthalmic procedures, provided they had been trained to perform the procedures by an ophthalmologist.

Following an investigation, we issued compliance advice to RANZCO expressing concern that its letter discouraged members from training optometrists to perform these surgical procedures, with the potential to substantially lessen competition.

RANZCO sent a clarifying letter to its members stating that it had not intended to suggest its members refuse optometrist training or to suggest potential disciplinary risk from doing so.

*Are entry examinations or assessments justifiable and proportionate?*

- Entry exams or assessments should be justified by and proportionate to the risks to the public of the occupation, and pass rates should be monitored. Entry hurdles should not be so high as to make for a 'closed shop'.
- Excessive costs, infrequent scheduling, and lack of transparency in assessment criteria can create unnecessary barriers to entry.

*Are there limitations on the scope of practice?*

- Defining a scope of practice is sometimes necessary to protect the public from harm, but it can limit flexibility. Other providers may be capable of competently providing the relevant services but, if they do not have the specified qualifications, would be prohibited from doing so.
- A regulatory body should have mechanisms to review scopes of practice periodically for ongoing need and justification.



## Conduct restrictions

*Are there restrictions on advertising?*

- Advertising is critical for competition. Unless authorised or exempt from the Commerce Act, any restrictions on advertising may breach competition law. Any restrictions on advertising should be linked to consumer harm and be a last resort measure.
- The Fair Trading Act already protects consumers from misleading and deceptive conduct. Additional restrictions beyond the general law should be clearly justified and not restrict competition.

*Are there restrictions on how practitioners or businesses set prices?*

- Price is a key dimension of competition. Unless authorised or exempt from the Commerce Act, any restrictions on fees or how they are set could be illegal.
- 'Recommended' prices or fees and 'standard' rates risk breaching the Commerce Act, and should be approached with caution, where practitioners may be in competition with one another.

*Are there restrictions on the structure of businesses?*

- Constraints on or requirements as to the types of business model or ownership structure that is supported can limit growth and expansion.
- While some restrictions may aim to ensure ethical oversight, they should not unnecessarily prevent new or more efficient business models and should be reviewed periodically for ongoing relevance.

*Are professional conduct rules proportionate and fairly enforced?*

- Codes of conduct and ethical guidelines should be clear and consistently applied.
- Regulatory functions and advocacy for the occupation should be separated. The purpose of regulatory functions is to protect the public interest. Advocacy activities aim to benefit the profession.
- Disciplinary functions should have a measure of independence to avoid actual or perceived conflicts of interest, and penalties should be proportionate.

### CASE STUDY

#### Attempt to restrict price competition between pharmacies

In 2012, during negotiations with District Health Boards of the Community Pharmacy Services Agreement (CPSA), some pharmacies and the Pharmacy Guild successfully lobbied for contractual clauses that prohibited discounting of prescription co-payments.

The effect of those clauses was to require pharmacies to charge consumers the full prescription co-payment and barred any inducements or rewards.

In our investigation we found that these provisions likely breached section 27 of the Commerce Act by substantially lessening competition. The clauses were subsequently withdrawn and the Commission issued warnings to the District Health Boards, the individual pharmacies involved, and to the Pharmacy Guild for their role in facilitating the agreement.

This illustrates the risk of an anti-competitive agreement being entered into in an occupational regulation context. The risk can arise because, while the industry body may be seeking to co-ordinate a collective position, some of the participating parties may be competitors.

## Occupational regulatory bodies and practitioners should be alert to the risk of anti-competitive agreements

Collegiality within an occupational regulation setting can invite collaboration. Careful consideration will be needed where the collaborating participants may be competing with one another.

A cartel is where two or more businesses agree not to compete with each other. Cartel conduct can take many forms, including:

- **Price fixing** – such as agreeing on fees, discounts, or pricing structures.
- **Restricting output** – limiting the number of practitioners or services.
- **Sharing markets** – dividing up customers, regions, or types of work.
- **Rigging bids** – coordinating responses to tenders or procurement processes with agreement as to who should win a bid.

Anti-competitive agreements can arise between practitioners, or between regulatory bodies and practitioners, for example if a regulatory body was to coordinate a collective response among practitioners to increase prices or fees.

Under the Commerce Act any recommendation made by an association or body of persons to its members is deemed to be an arrangement made between the members of the association, and between the association and its members.

### Useful resources

Our website has a range of resources on cartel conduct and how to avoid it, on competitor collaboration and where that is allowed, and options for navigating potential issues, such as our collaborative activity clearance or authorisation processes.

<https://comcom.govt.nz/business/avoiding-anti-competitive-behaviour/what-is-a-cartel>

[https://comcom.govt.nz/\\_data/assets/pdf\\_file/0036/89856/Competitor-Collaboration-guidelines.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0036/89856/Competitor-Collaboration-guidelines.pdf)

Our Trade Association fact sheet explains the risks that can arise in trade association settings where the participants will often be competitors.

[https://comcom.govt.nz/\\_data/assets/pdf\\_file/0029/94088/Trade-associations-Fact-sheet-April-2021.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0029/94088/Trade-associations-Fact-sheet-April-2021.pdf)

### Practitioners should raise any concerns

Regulatory bodies' processes for making and changing regulatory requirements should be open, transparent and consulted on.

Practitioners should engage with their regulatory bodies in these rules-making processes to raise any concerns they may have with what is proposed. These guidelines can help with articulating concerns where they are about the competitive impacts of proposed measures.

Concerns about possible anti-competitive behaviour can be raised with us. <https://comcom.govt.nz/report-a-concern>

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This is a guideline only and reflects the Commission's view. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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