re

**Recommendations Summary | Ngā Kōrero Whakarāpopoto**

**Review of the Health and Disability Commissioner Act 1994 and the**

**Code of Health and Disability Services Consumers’ Rights |**

Ko te arotakenga o Te Ture Toihau Hauora, Hauātanga 1994 me te

Tikanga o ngā Mōtika Kiritaki mō ngā Ratonga Hauora, Hauātanga

**March 2025 | Poutū-te-rangi 2025**

****



**About this report**

This document is a companion to *Recommendations Report | He Tuhinga Taunaki. Review of the Health and Disability Commissioner Act 1994 and the Code of Health and Disability Services Consumers’ Rights.* It contains all the recommendations HDC made following its review of the Act and the Code.

You can find the full report at review.hdc.org.nz.

Where page numbers are listed, this indicates where you can find the relevant section in the *Recommendations Report*.

**Recommendations to the** **Minister of Health**

|  |
| --- |
| 1. **Note** that the review has identified opportunities to better promote and protect consumer rights through changes to both law and practice, particularly to improve complaints processes, support good practice, and improve responsiveness to the needs of Pae Ora populations — Māori, tāngata whaikaha | disabled people, and Pacific peoples.
 |
| 1. **Note** that changes to the Health and Disability Commissioner Act 1994 (the Act) and the Code of Health and Disability Services Consumer’s Rights (the Code) should be progressed in parallel with changes to the Health Practitioners Competence Assurance Act 2003 (HPCAA), the Mental Health Bill, Pae Tū: The Māori Health Strategy, the Law Commission’s review of adult decision-making capacity law, and the Government’s response to the recommendations made by the Inquiry into Abuse in Care.
 |
| 1. **Agree** to put the development of a bill to update the Act in line with this report on the Ministry of Health’s work programme and the Government Legislation Programme, and progress in parallel with the review of the HPCCA and Mental Health Bill.
 |
| 1. **Direct** the Ministry of Health to establish a technical working group to refine the detail of proposed changes to the Act that includes community and provider representatives, and HDC as an independent advisor.
 |
| 1. **Agree** inprinciple that the Code should be strengthened to address matters identified in this review; and that changes should occur after changes to the HDC Act to ensure cohesive legislative change. HDC will provide you with a revised Code following changes to the Act, or at the next review, whichever is earlier.
 |
| 1. **Note** that most of the issues identified and outcomes sought in the Act and Code review can be addressed operationally by HDC, and that HDC is progressing a work programme to implement operational improvements that can be made within current resources.
 |
| 1. **Note** that HDC will discuss options and resource implications for other improvements with the Ministry of Health.
 |

## **Recommendations to the Ministers of Health and of Disability Issues**

|  |
| --- |
| 1. **Note** that sector standards, guidance, commentary, and education are important levers to improve quality of care in the health and disability systems. The responsibility for these levers is shared across agencies and providers. This review has:
* Reinforced the need for a disability services quality framework as recommended by HDC in our July 2024 *Report on complaints to HDC about Residential Disability Support Services*;
* Identified gaps in commentary, guidance, and education in several areas, with the highest priorities being supported decision-making, upholding Right 1(3), and complaint resolution; and
* Identified the need for a whole-of-system approach to ensure cohesive safeguards and appropriate accountability for the use of AI in health and disability care.
 |
| 1. **Note** the critical roles of the Ministry of Health and Whaikaha | Ministry of Disabled People, Te Tāhū Hauora | Health Quality and Safety Commission (HQSC), Health New Zealand | Te Whatu Ora, and the Ministry of Social Development in responding to the issues identified in this review.
 |
| 1. **Note** that we will prioritise and respond to gaps in commentary, guidance, and education that are best addressed by HDC, and will work with the health and disability sector in relation to issues and suggestions identified through this review that require a wider system response.
 |

## **Topic 1: Better and Equitable Complaints Resolution**

|  |
| --- |
| 1. Amend the purpose statement in section 6 of the Act to focus on people as well as processes
 |
| **Recommendations and response** | * **Do not progress suggestion** to incorporate ‘mana’ into the purpose statement.
* **Note** that a more people-centred approach to complaints resolution can be achieved operationally.
* **Propose** new change to replace the complaint resolution principle ‘simple’ with ‘accessible’, and ‘speedy’ with ‘responsive’ in the Act’s purpose statement and in Right 10, making the new principles ‘*fair, accessible, responsive, and efficient*’.
* **Ministry of Health to consider** whether there should also be an explicit reference to timeliness within the complaint resolution principles.
 |
|  **Pages:** 20-21 |
| 1. Clarify cultural responsiveness
 |
| **Recommendations and response** | * **Confirm proposed Right 1(3) wording** with change to add ‘tikanga’ after ‘needs’ so that the right becomes ‘Every consumer has the right to be provided with services that take into account their needs*, tikanga, culture, language, identity*, values, and beliefs.’
* **HDC to consider opportunities** to strengthen capability to assess and respond to potential breaches of Right 1(3), including reviewing our processes and guidance to staff to ensure that the correct information is obtained during the complaints process to accurately identify elements of tikanga and further cultural considerations.
* **HDC to continue** to strengthen our internal cultural capability, including the use of tikanga-led approaches to complaints resolution.
 |
| **Pages:** 21-22 |
| 1. Clarify the role of family, support people and whānau (changes to Right 3, 8 and 10 of the Code)
 |
| **Recommendations and response** | * **Confirm proposed wording** to replace ‘independence’ with ‘autonomy’ in Right 3 and change this right to: ‘Every consumer has the right to have services provided in a manner that respects the dignity and *autonomy* of the individual.’
* **Confirm proposed wording** in Right 8 to change this right to: ‘Every consumer has the right to have one or more support persons of their choice present, except where safety may be compromised, or another consumer’s rights may be unreasonably infringed. *Where support people cannot be physically present, this includes the right to have support people involved in other ways*.’
* **Revise proposed wording** for Right 10(1) to: ‘Every consumer has the right to complain about a provider in any form appropriate to that consumer. *This includes the right to support to make a complaint.’*
* **HDC to update commentary and education** to promote consumer and whānau understanding of these rights and avenues for complaints, and provider awareness of their obligations to support changes.
* **HDC to consider opportunities** to share learning and guidance with the sector on responding to complaints from third parties.
 |
| **Pages:** 22-25 |
| 1. Ensure gender-inclusive language
 |
| **Recommendations and response** | * **Confirm proposed** gender-neutral language for the Code.
 |
| **Page:** 25 |
| 1. Protect against retaliation
 |
| **Recommendations and response** | * **Confirm proposed wording** of new Right 10(9): ‘A provider may not treat, or threaten to treat, less favourably than other people in the same or substantially similar circumstances —

(a) any consumer of services who is, or may be, the subject of a complaint;(b) any person who makes, has made, intends to make, or encourages someone else to make, a complaint; or(c) any person who provides information in support of, or relating to, a complaint.’* **HDC to consider opportunities to promote awareness** of protections people have against retaliation.
 |
| **Pages:** 25 – 27 |
| 1. Clarify provider complaints processes
 |
| **Recommendations and response** | * **Note** that recommended changes to the purpose statement of the Act will have implications for Right 10(3) and the wording changes being considered to streamline Right 10.
* **HDC to ensure that** finalisation of the revised wording of Right 10 occurs in parallel with revised wording of section 6 of the HDC Act, or at the next review, whichever is earliest.
* **HDC to share feedback** from this reviewwith the Ministry of Health, Whaikaha (Ministry of Disabled People), Health NZ, Ministry of Social Development, HQSC, and other relevant organisations, to support improvement of the visibility, consistency, and quality of provider complaint processes.
 |
| **Pages:** 27 – 28 |
| 1. Strengthen advocacy services
 |
| **Recommendations and response** | * **HDC and the Director of Advocacy to consider opportunities to improve communication and education** to consumers and providers about the role of advocacy services and the benefits of involving an advocate in the complaints resolution process.
* **HDC and the Director of Advocacy to consider opportunities** for HDC and advocacy services to identify more effective and efficient ways of working together.
* **Director of Advocacy to explore with advocacy services any operational changes** that can be made within current resourcing to respond to feedback provided during this review.
 |
| **Pages:** 28 – 29 |
| 1. Improve the language of complaint pathways in the Act
 |
| **Recommendations and response** | * **Confirm proposed wording** of section 61 to replace ‘mediation conference’ with ‘facilitated resolution’.
* **HDC to review** and improve its communication in response to feedback provided during this review.
 |
| **Pages:** 29 – 30 |
| Other feedback to support better and equitable complaints resolution |
| **Recommendations and response** | * **Note** that most of the suggested changes are already being addressed by HDC’s current work or existing provisions in the Act and the Code.
* **HDC to consider feedback** as part of its continuous improvement programme.
* **Ministry of Health to explore** clarifying HDC’s jurisdiction in relation to specific situations after the death of a consumer.
 |
| **Pages:** 30 – 33 |

##

## **Topic 2: Making the Act and the Code effective for, and responsive to, the needs of Māori**

|  |
| --- |
| 1. Incorporate tikanga into the Code
 |
| **Recommendations and response** | * **Do not progress** proposed wording to incorporate ‘mana’ into Right 1.
* **Propose new wording** to include ‘*tikanga*’ after ‘needs’ in Right 1(3).[[1]](#footnote-2)
* **HDC to consider opportunities to promote** provider obligations under Right 1(3), and the te reo Māori translation of the Code. Note that the revised posters are tri-lingual, incorporating Māori, NZSL, and English.
 |
| **Pages:** 36 – 37 |
| 1. Give practical effect to Te Tiriti in the Act
 |
| **Recommendations and response** | * **Confirm suggestions** to give practical effect to te Tiriti in the Act (see Appendix 4 of the *Recommendations Report*).
* **Confirm new proposal** to strengthen HDC’s leadership by amending section 9 of the Act to create collective requirements for Deputy Commissioners that include, but are not limited to, in-depth knowledge, experience, and expertise in relation to te ao Māori, mātauranga (Māori knowledges, intelligences, systems, and ways of being), tikanga (Māori practices, values, and principles), kawa (Māori processes), and reo Māori (Māori languages).
* **Confirm proposal** to include specific provisions in section 10(1) to strengthen qualifications for the appointment of the Commissioner in relation to the Commissioner’s ability to serve Māori effectively.
* **The Ministry of Health** should seek guidance from the submissions we received for how these suggestions could be expressed in the development of any Amendment Bill.
 |
| **Pages:** 37 – 39 |

## **Topic 3: Making the Act and the Code work better for tāngata whaikaha | disabled people**

|  |
| --- |
| 1. Strengthen disability functions in the Act
 |
| **Recommendations and response** | * **Confirm new suggestion** to strengthen HDC’s leadership by amending section 9 of the Act to create collective requirements for Deputy Commissioners that include, but are not limited to, lived experience of disability and an understanding of the rights of disabled people and the operation of the disability support sector.
* **Additional suggestion to** strengthen the qualification for appointment of the Commissioner in section 10(1)(e) by replacing the phrase ‘the person’s understanding of the various needs of disability services consumers’ with ‘*the person’s understanding of disability rights and disabled people’s experiences of the health and disability system’*.
* **Confirm suggestion with revisions** to extend reporting in section 14(k) to any relevant Ministers.
* **Note that HDC’s Disability Strategic Plan** includes actions to make our systems, processes, and communications more responsive to the needs of tāngata whaikaha | disabled people and to support improvements to health and disability services for tāngata whaikaha | disabled people.
 |
| **Pages:** 43 – 45 |
| 1. Update definitions relating to disability
 |
| **Recommendations and response** | * **Confirm suggestion** to update definitions and suggest the Ministry of Health collaborate with tāngata whaikaha | disabled people on language to be used.
* **HDC to provide the public with clear communication** of the definition of ‘disability supports and services’ that are captured by the Code.
 |
| **Page:** 45 |
| 1. Strengthen references to accessibility
 |
| **Recommendations and response** | * **Confirm proposal** to remove ‘reasonably practicable’ from Right 5(1).
* **Confirm proposal** to add ‘accessible’ to Right 5(1).
* **Confirm new proposal** to change ‘appropriate supports and/or support peoples’ in Right 5(1) to ‘*appropriate assistance and supports*’.
* **Note that these proposals will change Right 5(1) to:** ‘Every consumer has the right to effective *and accessible* communication in a form, language, and manner that enables the consumer to understand the information provided. This includes the right to *appropriate assistance and supports, including* a competent interpreter.’
* **HDC to share feedback** on accessibility barriersexperienced by tāngata whaikaha | disabled people with the Ministry of Health, Whaikaha | Ministry of Disabled People, and Health New Zealand to support quality improvement.
* **HDC to consider** feedback around our accessibility and communication internally and incorporate this into our quality improvement programme and Disability Strategy.
 |
| **Pages:** 45 – 47 |
| 1. Strengthen and clarify right to support to make decisions
 |
| **Recommendations and response** | * **Confirm in principle direction** toalign the language relating to diminished capacity in Right 7 with the language recommended by the Law Commission (eg, currently ‘affected decision-making’ rather than ‘not competent’ or ‘diminished competence’) in their final report.
* **Confirm draft wording** for Right 7(4)(b):‘reasonable steps have been taken to ascertain the *will and preferences* of the consumer; and’
* **Confirm draft wording for** Right 7(3): ‘Where a consumer has *affected decision-making capacity*, that consumer retains the right to make informed choices and give informed consent *with respect to a particular decision*, to the extent appropriate to *their* level of *decision-making capacity, in relation to that decision. Where necessary, this includes the right to support to make decisions*.’
* **Confirm draft wording** forRight 7(4)(c)(i): ‘if the consumer’s *will and preferences*have been ascertained, and having regard to*their will and preferences,* the provider believes, on reasonable grounds, that the provision of the services is consistent with the informed choice the consumer would make if *they had decision-making capacity*’.
* **Confirm draft wording for Right 7(4)(c)(ii):** ‘if 7(4)(c)(i) does not apply, the provider takes into account the *will and preferences* of the consumer *to the extent they are ascertained*, and the views of family or *whānau and* other suitable persons who are interested in the welfare of the consumer’.
* **Note** that finalisation of proposed Code changes should occur following the passage of the Mental Health Bill and publication of the Law Commission report into adult decision-making capacity.
* **HDC to consider** its role in promoting and developing sector guidance to improve capacity assessments and provide greater clarity to providers of their obligations to support consumers to make informed choices and give informed consent, and where consent cannot be given, to ascertain their views.
 |
| **Pages:** 47 – 50 |
| 1. Progress consideration of HDC’s 2019 draft recommendations relating to unconsented research
 |
| **Recommendations and response** | * **The** **Ministry of Health** progress the HDC’s 2019 report recommendations ‘Health and Disability Research with Adult Participants who are Unable to Consent’, and ensure lived experience representation, as part of the development of a Health and Disability Commissioner Amendment bill.
 |
| **Page:** 50 |
| Other feedback to support making the Act and the Code work better for tāngata whaikaha | disabled people |
| **Recommendations and response** | * **Note** that HDC has committed to actions within its Disability Strategic Plan to make systems, processes, and communications more accessible and responsive to the needs of tāngata whaikaha | disabled people.
 |
| **Page:** 51 |

## **Topic 4: Considering options for a right of appeal of HDC decisions**

|  |
| --- |
| 1. Introduce a statutory requirement for HDC to review decisions
 |
| **Recommendations and response** | * **Confirm proposed suggestion** to incorporate a statutory requirement for HDC to review decisions in the Act, with a time-limit and criteria to limit the scope and circumstances of a review in the interests of finality.
* **Consider opportunities** to make HDC’s existing review processes, as well as external options to challenge HDC’s decisions, more transparent.
* **Consider opportunities** to improve HDC’s complaints processes and communication of decisions to address reasons why parties may request a review.
 |
| **Pages:** 54 – 55 |
| 1. Lower the threshold for access to the Human Rights Review Tribunal (HRRT)
 |
| **Recommendations and response** | * **The Ministry of Health considers** **this matter further** in consultation with a diverse array of stakeholders and other Ministries.
 |
| **Pages:** 56 – 57 |

## **Topic 5: Minor and technical improvements**

|  |
| --- |
| 1. Revise the requirements for reviews of the Act and the Code
 |
| **Recommendations and response** | * **Confirm proposed suggestions** to make the reviews of the Act and Code concurrent and align their requirements, streamline the steps for reviews, and shift the requirements for reviews to ‘*at least every 10 years’*.
* **Consider opportunities** to engage more regularly with stakeholders — particularly communities who face barriers to making complaints.
 |
| **Pages:** 61 – 62 |
| 1. Increase the maximum find for an offence under the Act from $3,000 to $10,000
 |
| **Recommendations and response** | * **Confirm suggestion** to increase the maximum fine to $10,000.
 |
| **Pages:** 62 – 63 |
| 1. Give the Director of Proceedings the power to require information
 |
| **Recommendations and response** | * **Do not progress suggestion** to give the Director of Proceedings the power to require information.
* **HDC to improve internal communication/feedback** about the Director of Proceedings’ role and processes and any lessons from decisions to prosecute or not, to support continuous quality improvement.
 |
| **Page:** 64 |
| 1. Introduce a definition for ‘aggrieved person’
 |
| **Recommendations and response** | * **Confirm suggestion** to substitute the phrase ‘aggrieved persons’ with the phrase *‘the complainant (if any) or the aggrieved person (if not the complainant)’* where it appears in relevant provisions from section 51 onwards.
* **The Ministry of Health consider this change** alongside its review of the Health Practitioners Competence Assurance Act.
 |
| **Pages:** 65 – 66 |
| 1. Allow for substituted service
 |
| **Recommendations and response** | * **Confirm suggestion with changes** to substitute the phrase ‘the Commissioner must advise’ with ‘*the Commissioner must make reasonable attempts to advise*’ in section 43(1).
* **Consider opportunities** to improve the way we collect and update people’s contact information as part of ongoing quality improvement.
 |
| **Pages:** 66 – 67 |
| 1. Provide HDC with grounds to withhold information where appropriate
 |
| **Recommendations and response** | * **Do not progress** the proposal to provide HDC with grounds to withhold information where appropriate.
* **The government progress** the Law Commission’s recommendationto introduce a new withholding ground into section 9 of the Official Information Act (R24)[[2]](#footnote-3).
 |
| **Pages:** 67 – 68 |
| 1. Expand the requirement for written consent for sedation that is equivalent to anaesthetic
 |
| **Recommendations and response** | * **Confirm suggestion** to substitute the phrase ‘under general anaesthetic’ with ‘*given medication designed to alter their level of consciousness, or awareness or recall, for the purpose of undertaking the procedure*’ in Right 7(6)(c) of the Code.
* **Consider guidance** by HDCto improve the sector’s understanding of Right 7(6)(c).
 |
| **Pages:** 68 – 70 |
| 1. Clarify the requirement for written consent where there is a high risk of serious adverse consequences
 |
| **Recommendations and response** | * **Do not progress proposal** to add the word ‘serious’ into Right 7(6)(d).
* **The** **Ministry of Health** work with HDC and other key stakeholders to improve practice and understanding in relation to informed consent and risk. Note that this work needs to involve consumers.
 |
| **Pages:** 70 – 71 |
| 1. Clarify the Code’s definition of teaching and research
 |
| **Recommendations and response** | * **Do not progress** suggestion to define teaching and research in the Code**.**
* **The Ministry of Health**, in partnership with HDC and the National Ethics Advisory Committee, leads a workprogramme around effective settings for research that best balances people’s rights and sector context.
* **Note that HDC has undertaken work** to promote informed consent in relation to teaching.
* **HDC** to work with regulatory authorities to consider how expectations around informed consent in the context of teaching can be made clear across professions.
 |
| **Pages:** 71–73 |
| Other feedback to support minor and technical improvement  |
| **Recommendations and response** | * **The Ministry of Health** consider changes to section 72 of the Act (Liability of employer and principal) to support clarity and appropriate accountability and better reflect current employment practices in the sector.
 |
| **Pages:** 73 – 75 |

1. The new wording of Right 1(3) would now be: ‘Every consumer has the right to be provided with services that take into account their needs, *tikanga*, culture, language, identity, values, and beliefs.’ [↑](#footnote-ref-2)
2. Recommendation 24. *The Public’s Right to Know: Review of the Official Information Legislation.* Law Commission report; no.125, p. 130. [↑](#footnote-ref-3)