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Morag McDowell
Health and Disability Commissioner
By email to: review@hdc.org.nz

Tēnā koe Morag

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

Thank you for the opportunity to provide submissions on this important review undertaken by your office (the HDC). We also appreciate the extension granted to enable us to provide this submission.

It is also an opportunity to reiterate how much we value the collegial and cooperative relationship between our organisations, both in the regular discussion you and I have, and in the liaison between senior staff. The value we get from our shared relationship with Whakawaha cannot be overstated.

Our submission generally relates to the interface between the HDC Act and Code, and the Health Practitioners Competence Assurance Act 2003 (the HPCA Act). We note that many of the issues raised could be resolved through policy, protocol, and formal or informal arrangements between our organisations - without the need for legislative change. An excellent example, is the recent work that has been done by your office in managing issues where a doctor is alleged to have engaged in sexual misconduct.

Engagement with regulators

Sections 34 to 45 of the HDC Act relate (among other things) to engagement with responsible authorities (RAs) under the HPCA Act. As noted above, we appreciate the work done to date on information sharing with the Medical Council. We strongly encourage continued early engagement with RAs when complaints are received, to ensure that the RA can consider whether interim orders are required under the HPCA Act to protect public safety. We note that section 39(1) of the HDC Act provides for this, and we strongly support explicit consideration of risk of harm in the first review of a new complaint. We are happy to work with the HDC in defining possible indicators of risk of harm signalling a need to notify an RA under section 39 of the HDC Act.

Early resolution, restorative justice and hohou te rongo

We strongly support the early work that has been done by the HDC in improving its range of resolution processes. We support continued focus on building this practice. We would also support a review of the thresholds for referring a matter for resolution/restorative justice/hohou te rongo, with a view to increasing the percentage of concerns that take this route. This might also include

informing parties that, wherever possible, the HDC will aim explore these avenues in the first instance.

Reducing duplication of conduct issues

We are conscious of the impact of time on parties to a complaint that is being considered by both organisations. In cases that take the longest to resolve, the parties involved could potentially be involved in:

- An HDC assessment and investigation;
- A Council assessment and referral to a Professional Conduct Committee investigation; and
- A Health Practitioners Disciplinary Tribunal hearing.

On its own, each process can take a significant amount of time. Collectively they are likely to amount to multiple years. This is not healthy for all involved and should be avoided where possible.

The HPCA Act restricts us from investigating conduct matters while the HDC is assessing/investigating a complaint. Given our mandate to protect public health and safety, we would value the opportunity to investigate fully, and as promptly as possible where HDC has identified issues of public safety or concerns about a doctor's professional conduct. This is particularly as a Professional Conduct Committee appointed by Council has a range of investigative tools at its disposal, including, the power to call for, and require the provision of any information the PCC believes on reasonable grounds, is necessary for its investigation.[1]

We value the recent developments in management of complaints where a doctor is alleged to have engaged in sexual misconduct. It would be beneficial to formalise this arrangement, and to discuss other circumstances where a similar approach could be applied.

Reducing duplication of inquiries and sharing system safety lessons

Since the establishment of HDC, the Health Quality & Safety Commission (HQSC) has been set up to monitor the quality and safety of New Zealand's health system, and to improve system safety by helping the health sector learn from HQSC data.

There is value in each entity recognising one another's contributions, and working together to enhance each organisation's core functions. For:

- HDC – focus on complaint resolution;
- HQSC – focus on system learning and change; and
- MCNZ – focus on ensuring that doctors are fit to practise medicine.

We already consult between our organisations to identify whether HDC or MCNZ is best placed (in the first instance) to manage a particular matter that may warrant an investigation or further inquiry; and we collaborate with HQSC in sharing any system safety lessons from our inquiries.

[1] HPCA Act, s77

Proposal to introduce a right of appeal

We make the following observations:

- Appeals take time, money and human resource. We understand all these resources are already under significant pressure at the HDC, and in the Courts.
- A statutory right of appeal would also have implications on regulators. For example, we often defer making a decision when we receive a notification about a doctor until we know HDC's outcome. Introducing an appeal process would lengthen the process for all while we await the end of the appeal period, or the outcome of the appeal. It also does not facilitate closure for the patient, their family and the health professionals involved.
- Introducing an appeal process could create a perception that the HDC is adversarial.
- As the HDC is a government agency, consumers can complain to the Ombudsman if they believe that they have not been treated fairly by the HDC. An appeal process might be seen as a duplication of an existing process.
- Should the HDC introduce an appeal process, such a process should facilitate *fair, simple, speedy, and efficient resolution of complaints*, in the interests of all parties.

Improving the experience for Māori

The Medical Council is not a Māori representative organisation. However, we are committed to engaging with Māori and see strong links with the work that the HDC is doing. We hope there is an opportunity to provide input in this area of work after the HDC has consulted with Māori to develop appropriately responsive solutions.

Equity

In general, we support amending the purpose statement to include the upholding mana, as proposed. We have some specific thoughts about cultural responsiveness:

- We agree with re-wording Right 1(3) to be more inclusive. It should ensure that all groups with a collective culture – including disabled people, and groups within LGBTIQA+ communities – are included alongside those groups currently specified within the current Act.
- We note that that cultural responsiveness is not limited to exercising cultural competence, but also includes developing practice that leads to the experience of culturally safe care.
- We support a requirement for providers to deliver care that is received as culturally safe, based on the experience of the person/s receiving the care.
- Delivering culturally safe care requires a critical consciousness in providers that:
  i. fosters an understanding of power relationships, and
  ii. leads providers to address and hold themselves accountable for their own biases and attitudes, and for the structures they work in, and their impact on the quality of services provided.

In terms of proposals to clarify the role of whānau:

- We support changing the wording in Right 3 (Dignity and Independence) from 'independence' to 'autonomy' to ensure that interdependence is not negated;
- We support strengthening Right 8 (Support) to include the right to have whānau involved even where they cannot be present physically; and
- We support clarifying Right 10 (Right to Complain) to explicitly allow for complaints to be made by support people on behalf of the consumer.

Finally, we support changes to ensure gender inclusive language, and we support including a non-retaliation clause in Right 10 (Right to complain) to support people to feel safe to raise concerns and complain.

Closing comments

Thank you again for the opportunity to comment. If you wish to discuss any aspect of this submission, please contact [redacted]

We wish you well in conducting your review, and also pass on the best wishes of our Chair, Dr Rachelle Love.

Nāku noa, nā

Joan Simeon
Manukura|Chief Executive Officer