The Royal New Zealand College of General Practitioners
Te Whare Tohu Rata o Aotearoa

50 years

31 July 2024

Morag McDowell
Health and Disability Commissioner
PO Box 1791
AUCKLAND 1140

By email: review@hdc.org.nz

Tēnā koe Morag,

RNZCGP Submission - Health and Disability Commission - Review of the Act and Code 2024

Thank you for the opportunity to provide a submission on the proposal to review the HDC (Health and Disability Commissioner) Act and Code 2024.

The Royal New Zealand College of General Practitioners (the College) is the largest medical college in New Zealand. Our membership of over 5,800 general practitioners and rural hospital doctors comprises 40 percent of New Zealand's specialist medical workforce. The Medical Council of New Zealand accredits the College to deliver vocational training to the specialist General Practitioner and Rural Hospital Doctor workforce. Our Kaupapa aspires to improve equity by upholding principles of Te Tiriti o Waitangi and supporting members to be culturally safe and competent through the General Practice.

Our members provide effective care to their wider community. The safety, quality and effectiveness of care provided by 1000 general practices is determined by the College's Practice Quality Programme, against the Foundation Standard and achievement of Cornerstone modules.

Te Akoranga a Māui is the College's Māori representative group. With more than 200 members, Te Akoranga a Māui is proud to be the first indigenous representative group established in any Australian or New Zealand medical college.

Our submission is informed by our members including, the Pasifika chapter, and consultation with specialist GPs (General Practitioners), other medical colleges, and medico-legal advice.

Our submission

The College notes the responsibilities and purpose of the HDC (Health and Disability Commissioner) is to provide accountability through an independent complaint review process and provide decisions to improve healthcare outcomes for all New Zealanders. Our submission highlights the purpose of advocacy for consumers and to provide accountability for health providers. Our submission emphasises the purpose of resolution between parties and the HDC, focusing on how the HDC complaint process can be improved for patients and specialist GPs in the investigation process.

The HDC complaint process and outcomes from decisions are used to inform the College's education, training, quality programmes and clinical guidance to specialist GPs. For proposed changes to practice standards such as requirements of written consent for procedures with 'severe risk', and changes to research and training regulations, the College stresses the importance of a closer working relationship to develop better solutions and to inform better outcomes for patients.

Our Recommendations address the key concerns and impact of HDC practices raised by our members:

Equity in the Act and Code

1. The College recommends the Act and Code accommodate for the role of whānau in the complaint process and broaden their consideration of equity to include Pasifika peoples.

Reduce complaint resolution time

2. An improved triage process is implemented to increase awareness of preventative processes such as mediation, which are managed by the advocacy service, to help reduce the increasing number of HDC applications and time taken to resolve complaints.

3. The process for patients submitting an HDC complaint emphasises the importance of raising issues directly with their health provider and informs them about support available to them by the advocacy service.

4. The HDC prioritises mediation early in the process to prevent escalation and stress for those involved and aims to improve outcomes of the approach through a more constructive and restorative process.

Oversight on rulings

5. A formative process is introduced to decisions which are subject to peer review.

6. Any HDC decisions made must be reality-checked by relevant expert advisors to ensure realistic, appropriate and practical measures are made in consultation with those affected to resolve complaints.

Right to appeal

7. An appeals process would achieve improvements in decision outcomes for providers and consumers who have made a complaint but will need to be carefully considered in the context of limited resourcing and alongside the aim of reducing the duration of complaints.

8. If an appeals process is introduced the following refinements are included in the HDC planned appeals process:
   8.1. The right to appeal should be for both the patient *and* the provider(s) being investigated.
   8.2. If an appeal is made on a decision, both the patient and provider are notified
   8.3. The process would allow for consumers and providers to have the right to discuss their case in person, with their lawyer present, and support person/whānau if requested.

Case responsibilities and accountability

9. HDC decisions are considered with greater understanding of the responsibilities of specialist GPs and in the context of the environment that they work in, noting that responsibilities and accountability for patients do not rely solely with a GP.

10. Within the general practice environment, specialist GPs are recognised as part of a wider general practice team, working collaboratively across the primary, community, and hospital interfaces to integrate patient care – accountability is a responsibility of the entire system.

1. Equity in the Act and Code

The College commends the HDC for consulting widely with Māori in the review of the draft of the Act and Code.[i] The inclusion of tikanga and translations are positive steps toward increasing equity for Māori.

Key points:

Pasifika

Pasifika populations in the HDC process are rarely mentioned in the consultation document. The College highlights this as an oversight and advocates for several measures that have been suggested for improving Māori equity, would also apply for Pasifika people. This includes translations of the Code into Pasifika languages,

ensuring relevant information is promoted and accessible to Pasifika people, and improving cultural competence and safety within HDC processes.

Additionally, it is worth noting the discrepancy in complaints made by both Pasifika and Māori compared to their representation in Aotearoa's population. The 2023 HDC annual report shows 2% and 14% of complaints are made by Pasifika and Māori respectively and constitute 8% and 18% of the population.[ii] Both groups are under-represented in complaints, despite evidence showing worse health outcomes for both ethnicities. This suggests a lack of awareness of the HDC complaint process, or proficiency in cultural safety cause Māori and Pasifika to approach healthcare and resolution differently.

Our Pasifika chapter raised the idea of personal and communal resolution of issues being preferred by their patients and communities. If the HDC intends complaints to be recorded for data purposes, it should consider how the complaint process can adapt to Māori and Pasifika values. The College refers to the submission made by our Pasifika chapter[1] for more detailed explanation of these issues.

Monitoring outcomes

In the interest of ensuring an equitable complaint process, having access to regular reporting of data by HDC on complaints issued would support quality improvement, and include:

- How many complaints are dismissed, referred to an advocacy group or provider, or go on to investigation, broken down by demographics such as age, ethnicity, gender, sexuality, disability, and other populations.
- Results of complaints, as broken down by demographics.
- Provider demographics and the nature of a complaints made to allow for targeted education or support for providers most subject to complaints.

Access to data will inform the HDC of critical points, bias or cultural factors impacting on the complaint process, and what social and/or identity factors are most impacted by different stages of the complaint process. For providers, having access to information on whether subsets of providers are more often targeted by complaints will inform insights on providing training and support to providers. It would help to reveal socio-political and environmental trends or power dynamics impacting on provider-patient relationships.

Tikanga Māori and cultural safety

The College supports that HDC move to promote tikanga Māori and people focused approaches. It has been shown that Indigenous populations in many countries experience worse health outcomes than the national average. These inequities can be addressed not only by understanding other culture but by being actively critical of the values of our own cultures. This will include critical analysis of how our organisations and systems are constructed.[iii] The College's Foundation Standard sets these expectations for all general practices, standard 3.1, 3.2 and 3.3 are specifically focussed on the rights and health needs of Māori.[iv]

2. Reduce complaint resolution time

Time taken to resolve HDC Cases

The College highlights that any changes to the Act and Code should address the time taken to reach decisions in cases. The consultation document states, "75 percent of HRRT decisions are issued within six months", the other 25% can be much longer than this, with some GPs reporting over three years to resolve an issue. This is not an acceptable standard or timeframe for meeting the aims of a "speedy and efficient resolution". [v]

Our members have raised concerns about the investigation process as being non- transparent, inquisitorial, and generating a high level of stress for those being investigated. Where possible, the HDC process should avoid unnecessary pressure on specialist GPs and other healthcare workers from prolonged investigations that are perceived to operate on a guilty-until-proven-innocent basis.

[1] The Pasifika Chapter's response will be submitted separately

During the time taken to reach decisions, health providers do receive consistent reminders that they are under review and must disclose this information when they apply for their Annual Practicing Certificate (APC) each year. The process is demoralising, puts an additional burden on providers, and the time differential is frustrating for providers and patients.

Increases in the number of complaints

The College notes that in the last year, the HDC reported a "25 percent increase" in the number of complaints that HDC received on the previous year, and that specialist GPs feature predominantly in this picture. [ii] We note that GPs are coping with larger than normal patient loads due to increases in patient populations, people are presenting with more complex health needs, and increased barriers to accessing primary care and hospital services. The increased number of patients does not align with the availability of the specialist GP workforce, and this has seen practices adapting to a team-based model of care in general practice to respond to need. With the development of a team-based model of care, the HDC needs to recognise that GPs are not solely responsible for patient care. This is not recognised in the HDC process and the HDC does not account for the range of professionals providing services to patients. In these situations, specialist GPs have become vicariously liable.

Transparency of the complaints process

The consultation document also states: *"...feedback from consumers and whānau suggests that often providers' complaint processes are invisible or unclear" (p25)*

The lack of HDC understanding about the general practice model of care is apparent in this process. The College considers that a closer working relationship with the College would help to bridge this knowledge gap. The College's Quality Programme assesses the quality of a general practice complaints process against its Foundation Standard and provides guidance on allocating responsibilities, response times, triaging complaints and making targeted improvements, as is required by the Code. [iv, v] This process is formative, does not apportion blame, and is improvement focused involving the entire General Practice team collaborating to resolve an issue and allows for face-to-face mediation. This process has the advantage of:

- Reducing the blame burden on the team
- Reducing the pressure and sharing related work for the General Practice team
- Allowing a patient to be heard
- A people-focused complaints process and facilitation that encourages open-ended discussion to target improvements.

If needed, complaints can be escalated to the local PHO (Primary Health Organisations) to inform larger system changes.

3. Oversight on rulings

A more inclusive process

The College acknowledges the HDC's duty to advocate for the rights of all New Zealanders. To increase confidence in the process, we suggest that the HDC having insight into the processes and operations of general practice settings would improve the quality of HDC reviews. The role would also be supported with the relevant expert input in decisions to ensure a final decision is fair, responsive, and transparent. Where possible, in cases involving Māori and Pasifika whānau and health providers, having a health provider from the respective community to review cases would be a positive measure for increasing equity and outcomes.

Formative approaches

A formative process provides the opportunity for those involved in a case decision to enter a positive remedial process. Our members report that HDC decisions can be overly critical and may not account for the reality of a situation (e.g. that pre-testing to ascertain probability for a given condition could be extremely low), so decisions made about following up on such tests need to understand their priority for testing.

HDC making decisions outside its control

Some decisions made by the HDC relate to system changes which has resulted in decisions outside the scope of a general practice influence, resulting in advice or decisions that are not practical or appropriate, e.g., An HDC decision which instructed a general practice to work with their PMS vendor and the PHO to improve the monitoring functions of their computer system. This recommendation required action on system changes that are beyond the remit and control of an individual practice, and had broader health system-change implications, including significant costs.

4. Right to Appeal

The topic of 'Right to Appeal' raised on p.43 of the consultation, is a beneficial addition which the College considers will aid in empowering both Māori and disabled people and increase responsiveness to patient's needs during the HDC process.

We caution that the 'Right to Appeal' may result in investigation times being further extended, and this would increase the stress to the provider, frustration to the consumer and may necessitate use of additional resources by the HDC.

Given that reducing investigation times is also a goal of the HDC, investing in an acceptable mediation and triage process may reduce the number of people seeking the 'Right to Appeal'.

The College considers the appeals process should only be introduced if reduced waiting times and bureaucracy within the HDC process is achievable simultaneously.

5. Case responsibilities and accountability

Patient notes

HDC processes are becoming more risk averse and there is undue weight placed on written case notes, resulting in GPs producing more information than is needed to cover themselves from external scrutiny. Excessive notes are an unintended consequence of the HDC. Overly detailed case notes, rather than specific and relevant points, are leading to an increased likelihood of relevant information being missed by colleagues reading the notes, which has potential consequences for patients. It is not possible for consultation notes to be considered as a transcript of all the information shared in a consultation. Absence of information in consultation notes, in isolation, cannot be considered as evidence that information was not discussed.

Patient test results

A second example is the responsibility placed on general practitioners when managing patient test results and recalls. The HDC requests that all important impending tests should be placed on a recall list and the impact of these HDC decisions have caused members to raise multiple issues, including the following:

- The HDC's expectation that GPs proactively follow-up clinically significant investigation results are open to wide interpretation and requires further discussion by the College, HDC and indemnity advisors.
- GPs and general practice employees should not be held accountable for practice systems beyond their control to change.
- The ability of GPs to provide continuity of care is challenged by ongoing fragmentation of services, declining GP numbers, and under-resourcing in primary care.[vi] [vii]

The points above outline the increasing administrative burden and legal responsibilities of specialist GPs and the appropriateness of this burden, e.g., if a patient forgets/neglects to carry out a procedure and the case is reported to the HDC, then GPs have been deemed responsible for this omission under the current HDC process. This is not the case in secondary care where, if a patient does not turn up for an appointment or a test at a public hospital, we understand there is no follow up mandated. The College considers that this standard should be applied to health providers, as well as patients. This would make the process more accessible to Māori and Pasifika doctors. This

measure will be more effective for health providers in supporting them to understand what would be achievable and effective in improving health outcomes.

Conclusion

The HDC plays a significant role in protecting and promoting patient rights and wellbeing for all New Zealand populations. The low uptake by Māori and Pasifika patients is a concern and we suggest that more could be done to incorporate cultural safety into the HDC complaints process, and work to understand any barriers to access.

Our submission outlines potential recommendations that would improve the quality, timeliness, and transparency of the HDC complaints process by focusing on remedial and restorative approaches which are underpinned by cultural safety. We support changes that enable specialist GPs and patients to navigate the complaints process more effectively.

Together the College's, Quality Programme, the Foundation Standard, and our peer assessment process all play a significant role in reducing the number of complaints to the HDC. We indicate our interest in working with you to encourage development of a positive system that recognises and supports general practice teams to self-manage complaints and reduce the escalation and numbers of cases that present to the HDC.

The College would welcome the opportunity to meet with you to discuss our ideas for improvement of the HDC complaints process, and to speak to matters raised in our submission.

If you require further clarification, please contact Maureen Gillon, Manager Policy, Advocacy, Insights – [redacted].

Nāku noa, nā

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[i] Health and Disability Commissioner New Zealand, 2024, *Review of the Health and Disability Commissioner Act 1994 and the Code of Health and Disability Services Consumers' Rights,* [Accessed: https://review.hdc.org.nz/consultation-document/ , 22.6.24]

[ii] Health and Disability Commissioner, *Annual Report 2023*, https://www.rnzcgp.org.nz/gpdocs/New-website/Advocacy/PB6-2016-Apr-Managing-patient-test-results.pdf, [Accessed 8.7.24]

[iii] Dr Curtis, E, 2019, *Why Cultural Safety Rather than Cultural Competency is Required to Achieve Health Equity: A literature Review and Recommended Definition,* https://equityhealthj.biomedcentral.com/articles/10.1186/s12939-019-1082-3 [Accessed 25.7.24]

[iv] The Royal New Zealand College of General Practitioners, *The Foundation Standard,* https://www.rnzcgp.org.nz/running-a-practice/the-foundation-standard/turoro-patients/31-a-commitment-to-the-principles-of-the-treaty-of-waitangi/ [Accessed 17.7.24]

[v] Health and Disability Commissioner, *Rights of Consumers and Duties of Providers, https://www.hdc.org.nz/your-rights/about-the-code/code-of-health-and-disability-services-consumers-rights/, [Accessed 10.7.24]*

[vi] Royal New Zealand College of General Practitioners, 2016, *Managing Patient Test Results,* https://www.rnzcgp.org.nz/gpdocs/New-website/Advocacy/PB6-2016-Apr-Managing-patient-test-results.pdf , [Accessed 8.7.24]

[vii] Medical council of New Zealand, *The New Zealand Medical Workforce in 2022, fig 10,* https://www.mcnz.org.nz/assets/Publications/Workforce-Survey/64f90670c8/Workforce-Survey-Report-2022.pdf, [Accessed 15.7.24]