Subject:	**HDC Act and Code Review Submission by Director of Advocacy**		
To:	HDC Code Review		
From:	Charmaine Pene, Director of Advocacy	**Date:**	13 August 2024

Introduction

1. Below is my submission for the HDC Act and Code Review. The consultation document outlines key considerations and invites feedback on these and other issues or suggestions from the public. I concur with the suggestions made in the topic sections of the consultation document and to the revised translation of the code at appendix 2.

2. In my role as Director of Advocacy, I wish to highlight the following additional considerations and recommendations for your consideration.

Executive Summary

3. This submission looks at strengthening the role of advocacy and formalising a restorative approach within the Act's complaints management pathways. It also looks at how HDC and key health and disability agencies who hold regulatory and or monitoring roles could join up to give greater overall effect to the Code of Rights at a sector level.

4. The key recommendations are shown at appendix 1 to this submission. Key considerations are:

   a. update the principles to align with health and disability context of 21st Century

   b. restorative practice / approach (including Hohou te rongo) is a legitimate component within the Act's resolution pathways.

   c. promotion of the Code, through deliberate and targeted publicity and marketing campaign

   d. leveraging of HDC relationships with monitoring and regulatory bodies to give a whole of sector effect to the Code

   e. strengthening HDC mandated advocacy service within the Ngā Paerewa Health and Disability Services Standards

Principles / Purpose of the Act

5. In accordance with the HDC Act 1994 (The Act), the HDC Commissioner is authorised to select from a range of options to manage health and disability services complaints. These include early closure, early resolution, and investigation, through to formal legal proceedings. Considered against these options, the Act's purpose devised in 1990s of '….fair, simple, speedy and efficient resolution of complaints…' is problematic in today's 2020s' health and disability services setting. Health and Disability services complaints in the current context have become multifaceted, inevitably involves more than the two primary parties (consumer and provider) to including multiple providers (as part of the care pathway) and may include an oversight agency (e.g funder, or regulator). HDC complaint

management processes can also involve HDC initiated advocacy, navigator, or expert advice input adding to internal processes in complaints management.

6. Crucially, consumer and practitioner/provider interactions occur in the context of ongoing and increasing pressures on the overall social, health and disability systems in New Zealand impacting access, quality and timeliness of care. This places additional stress on both consumer and practitioner and at times resulting in a breakdown in communications. All of these factors work against the principles of simple, speedy and efficient management of complaints.

7. Recent publicised concerns have highlighted the negative impact of HDC delays on complaints management on both consumer/complainant and practitioner. While the delays can be attributed to high volumes of complaints being managed by HDC it also demonstrates delays by providers in responding to HDC request for information and also to complainants themselves. Early resolution while ideal in many low level complaints, are being escalated due to slowness in response by the provider.

8. Within HDC, Complaints are assessed as either early resolution (eg able to be resolved between the complainant and the practitioner/provider) or aspects of the complaints necessitates further assessment with potential for formal investigation. Noting the compounding issues above, highlights a need for compassionate and restorative approach to be factored into the overall complaints management process. Accordingly, it would be more appropriate to underpin HDC complaints resolution and management processes to include principles of fair, timely and empathetic. It is recommended that the term ‘speedy’ and ‘simple’ be removed as it is subjective and noting the complexities of many of the complaints the ability to resolve speedily is problematic.

9. Recommendation:

   a. Update the Act and Code as follows:

      i. HDC Act - Schedule 2, (a), ‘to secure fair, empathetic, and timely resolution of complaints…..’ and removing the words; simple, speedy.

      ii. HDC Act, Para 6, Purpose ‘…….to facilitate fair, empathetic, and timely resolution of complaints…’ and remove the words; speedy and simple

      iii. The HDC (Code of Health and Disability Services Consumers’ Rights) Regulations – Right 10 (3), ‘Every provider must facilitate fair, empathetic, and timely resolution of complaints’[1]

Restorative Approach

10. Complainants are inevitably looking for justice and recognition of harm. It is widely recognised that where harm has occurred, restorative approach towards resolution is both desirable and needed. Particularly where ongoing relationship between the consumer and provider is required. Accordingly, a focus should be on immediate rebuilding of the practitioner / consumer relationship which can be

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[1] This includes facilitation of restorative practice approach to resolving a complaint

critical for the consumer ongoing access to care[2]. Particularly in light of limited primary care services in a number of rural and smaller urban populations.

11. The rebuilding of consumer and provider relationship can be facilitated by a restorative and compassionate approach to complaints. Formal recognition of restorative practice[3] as an option within the Act and Code will facilitate a person centred complaints management process, and better meet the new suggested principles of accountability and empathy (para 5.a).

12. It is worth noting that a restorative approach is already recognised within the National Adverse Events Policy (Te Tāhū Hauora/HQSC);

    (pg 4) A growing body of literature now emphasises that understanding the experience of harm and meeting the needs of those harmed are key aspects of restoring relationships after harm has occurred. In the aftermath of harm, efforts to improve system safety must be balanced with responding to the human experience. A relational response is required to understand the needs of the people most directly affected and to provide opportunities to repair wellbeing, relationships and trust. Meeting these goals requires a restorative response that upholds and restores the dignity, or tapu, of all the people involved. This requires partnering with them to understand what harm has occurred and listening with empathy to their experiences…

13. A restorative approach is not an end in itself but is focused on supporting the consumer / whānau in dealing with the emotional and spiritual harm they have experienced and to enable the consumer to continue to engage with the health provider and to maintain overall trust and confidence in the health system. It is anticipated that a restorative approach where appropriate will not only support the relationship between the consumer and the provider but will enable a deeper understanding by the practitioner / provider of the consumer / whānau experiences in a more meaningful way.

14. Incorporating restorative practice into HDC processes would see the Commissioner making a recommendation as part of the existing complaints pathways. For example, as a referral to a practitioner / provider (s34) where restorative approach is considered appropriate, or where there is a breach finding (with recommendations) or as a result of an investigation including legal proceedings. Restorative practice can occur during a complaint's resolution pathway or at the end. It could be enacted at any point during the complaints process where it is considered it would be beneficial and may be requested at any time by the complainant / consumer. Currently, HDC are utilising a hui a whānau approach to complaints and this should formerly be extended to wider restorative practices.

15. As with the HDC Māori Directorate (responsible for hui-a-whānau), it is envisaged that the Advocacy Service could undertake restorative practice as part of its services or link into other suitable services/practitioners to facilitate this approach as part of complaints resolution process.

16. Another benefit from having restorative practice formally recognised within the Act, is to strengthen the overall health and disability sector in its development and embedding of restorative practice as well as augmenting Te Tāhū Hauora (HQSC) - National Adverse Events Policy and its reference to restorative practice. See policy excerpt:

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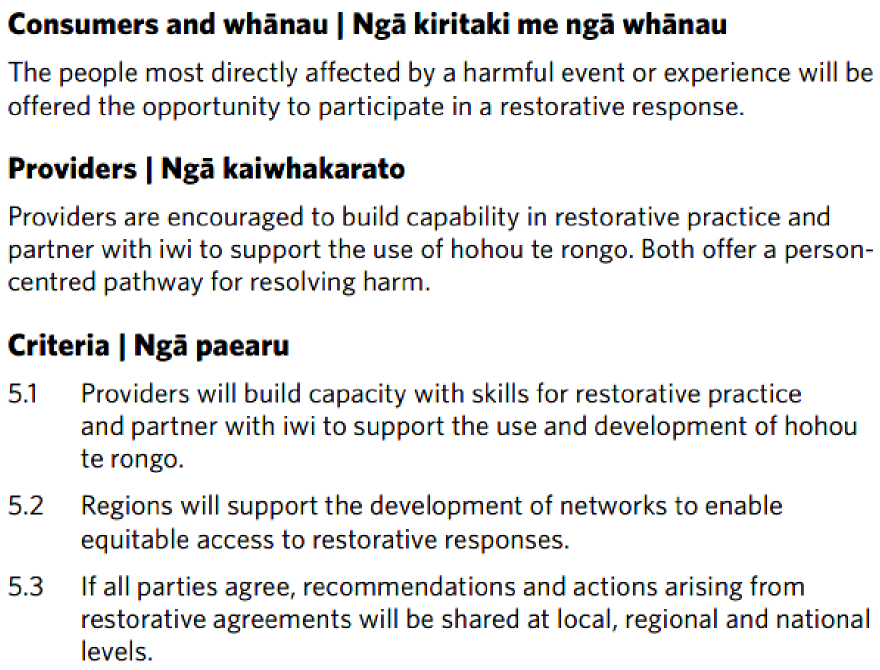
[2] HDC Regulations 1996 – Right 4 (4) 'Every consumer has the right to co-operation among providers to ensure quality and continuity of services'

[3] Includes hohou te rongo and hui-a-whānau



Consumers and whānau | Ngā kiritaki me ngā whānau

The people most directly affected by a harmful event or experience will be offered the opportunity to participate in a restorative response.

Providers | Ngā kaiwhakarato

Providers are encouraged to build capability in restorative practice and partner with iwi to support the use of hohou te rongo. Both offer a person-centred pathway for resolving harm.

Criteria | Ngā paearu

5.1 Providers will build capacity with skills for restorative practice and partner with iwi to support the use and development of hohou te rongo.

5.2 Regions will support the development of networks to enable equitable access to restorative responses.

5.3 If all parties agree, recommendations and actions arising from restorative agreements will be shared at local, regional and national levels.

17. Recommendations:

a. Agree that restorative practice / approach (including Hohou te rongo, hui a whānau) is a fitting element within the Act's complaints management pathways. Accordingly, the following wording is recommended within the Act and Code:

   i. HDC Act s34 (2) 'At any time before or after referring a complaint, in whole or in part, to an agency or person mentioned in subsection (1), the Commissioner may consult with the agency or person as to the most appropriate means of dealing with the complaint *(add footnote 'this can include restorative practice').*

   ii. HDC Act s37 (2) (a) On a referral of a complaint, under subsection (1), the advocate must – (a) use *their* best endeavours to resolve the complaint by agreement between the parties concerned *(add footnote 'this can include restorative practice')*

   iii. Add to HDC Act, Schedule; 1, Part 2 – Interpretation. Restorative Practice – is a 'voluntary, relational process where all those affected come together in a safe and supportive environment, to speak openly about what happened, to understand the human impacts and to clarify responsibility for the actions required for healing and learning[4].

   iv. HDC Regulations 1996 (The Code) add the following:

      1. Schedule; 1 (3) Consumers have rights and providers have duties; Every provider must take action to -

         (a) inform consumers of their right;

         (b) enable consumers to exercise their rights; and

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[4] National Adverse Events Policy

(c) (new!) facilitate restorative practice

2. Add footnote to; – Right 10 (3), 'Every provider must facilitate fair, empathetic, and timely resolution of complaints'[5]

b. Undertake a review of HDC internal complaints management pathways and processes to determine when and how it would be suitable to include consideration of restorative practice approach. Based on the review update internal processes that embeds restorative approach to complaints resolution and aligns with recommended changes to the Act and Code contained within this submission.

Promoting Advocacy Service and 'Code of Rights'

18. Active promotion of the Code of Rights falls largely on the Advocacy Services (refer to s30(f) below) and is a measurable performance output. In that regard, HDC requires the advocacy services to undertake 1500 educational sessions with both public and providers. Often these education sessions result in complaints being laid with the Advocacy service or HDC.

19. There is limited other publicity to promote the Code particularly on media platforms. Public awareness is generally raised through either an advocate's education session or is reliant on providers to inform consumers usually through the display of the Code of Rights poster and or upon receipt of a complaint and advising the complainant of the free Advocacy Service (refer Regulations 1996, s1). There has been limited research in NZ on the public's knowledge or understanding of the Code of Rights but anecdotally public awareness is low overall.

20. Promoting the Rights - s30 (f). Under this section of the HDC Act, Advocacy services are required to provide information to the public (including providers) on the rights of consumers. This includes providing information to consumers on obtaining consent for procedures and informing on the rights of consumers. **Accordingly, advocacy service has a crucial role in educating, and promoting the rights to the public.** While this is well understood within HDC, there continues to be a gap between the public's knowledge of their rights and providers understanding of the role of the Advocacy Service as mandated under the Act particularly on promoting the rights to both the public and with providers.

21. The current method agreed by HDC is for Advocacy to undertake a number of education sessions a year. This can be with both the public and providers. This is augmented by HDC's own networking and engagement activities. In order to promote the Rights, the Advocacy Service undertakes extensive engagement (networking) with communities and providers supporting the ability to go on to arrange educational sessions with staff and or consumers of the service. Networking and education go hand in hand. To that end the Advocacy service produces brochures which are left with providers during a networking or education sessions. The Advocacy service has a limited communications or marketing budget which is primarily spent on production of brochures and management of facebook page. There is no dedicated communications advisor. Between HDC and the Advocacy service there is limited publicising of the Code to the wider public. This has resulted in a number of consumers and their whānau being unaware of their rights and consequently empowering them to engage with their practitioner/provider about their concerns. This lack of awareness is likely a factor in complaints being

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directed to HDC, (in lieu of the provider and or Advocacy service) when an early resolution process between the consumer and provider is not only more appropriate but beneficial for ongoing relationship between both.

22. Over the past five years there has been a drop in number of Advocacy delivered education sessions, particularly to providers. This is in part due to providers declining the opportunity to undertake a session with an advocate (despite it being a free service). It is noted that HDC has successfully implemented online learning modules aimed at providers. However, this has had the flow on effect of some providers preferring to use this educational platform instead of an in-person advocate education session. The online HDC education includes a Complaints and early resolution module which briefly mentions Advocacy Service. Excerpt from module:

> **Advocacy**
> HDC works very closely with the Advocacy Service. Advocates offer free help and support to people with concerns about a health or disability service provider. They can help enable early resolution and support those involved through the complaints process. Advocates can help people to make a complaint and can assist them to resolve a complaint directly with the provider.

23. This is likely insufficient in imparting the value of advocacy services to providers in supporting early resolution and the requirement for providers to ensure consumers are advised about the Advocacy Service. Accordingly, there needs to be closer alignment between HDC and Advocacy around educational content and approaches to informing the public on the Rights (refer to Regulations 1996; s1 and Right 10). There is currently work underway to update HDC website to better inform the public of Advocacy Services and its key role in supporting early resolution.

24. However, there remains little or no proactive public messaging to the general public. The lack of online media presence or publicity campaigns on the Code of Rights and including the role of Advocacy Service, compounds the overall lack of public awareness. Consequently, public awareness is largely reliant on Advocacy Services efforts (which are resourced constrained) and or providers informing consumers about the free nationwide advocacy service. As a result, there is little awareness among New Zealand public of the Code. There is a need to strengthen the promotion of the Code and of the Advocacy Service. This would likely require a cyclic marketing / communications strategy and funding to promote on various platforms. By way of example - the national bowel and cervical screening programmes successfully use periodic TV campaigns to drive up public awareness. They also engage consumer groups to inform these campaigns.

25. Another way to strengthen the Advocacy service is reinforce the wording in the Regulations[6] itself. Currently, the Code mentions advocate/s twice:

    a. Right 10 – Right to Complain:

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[6] Health and Disability Commissioner (Code of Health and Disability services Consumers' Rights) Regulations 1996

   i. (2), (c), (i) - Every consumer may make a complaint to, any other appropriate person, including and independent advocate provided under the Heath and Disability Commissioner Act 1994

   ii. (6), (b), (i) – Every provider, unless an employee of a provider, must have a complaints procedure that ensures that the consumer is informed of any relevant internal and external complaints procedures, including the availability of independent advocates provide under the Health and Disability Commissioner Act 1994

b. Schedule; 1 (3) of Regulations 1996 also requires the provider to inform and enable consumers on exercising their Rights under the Code.

26. The requirements of the Code outlined above are further enforced under the Ministry of Health - Ngā Paerewa Health and disability services Standards (see below – Strengthening Compliance through other Regulations). There is the only external mechanism within the health and disability sector outside of HDC to strengthen the Regulations of the Code. Accordingly, does the HDC complaints management processes provide sufficient reinforcement of the Code as outlined in Rights 10 and Schedule 1 (3) above? In particular, confirming providers are informing consumers of their rights and providing consumers information of the Advocacy service? Can more be done to strengthen this area?

27. Recommendations:

   a. Undertake an internal review of ways HDC can reinforce Regulations 1996 - Right 10 (2), (c), (i), and (6), (b), (i), and Schedule 1 (3)

   b. closely align educational content of HDC and Advocacy to better leverage and highlight benefits of Advocacy with providers on achieving early resolution

   c. develop and resource a marketing / communications strategy (with Advocacy Services) specifically designed to increase public awareness of Consumer Rights, and

   d. include consumer groups to inform any publicity campaigns

HDC Relationship with Other Agencies to Promote Advocacy Service

28. The Royal Commission's report on Abuse in State Care clearly demonstrates the power imbalance by consumers and their whānau when making complaints about health professionals. Given the extent and seriousness of issues raised in the report it is beholden on regulatory authorities and other government agencies to do all they can to promote and enable consumers to access advocacy support.

29. The HDC Act enables the Commissioner to refer a complaint or inform other agencies e.g regulatory authorities and funders of complaints it receives. To that end HDC has established memorandums of understanding (MOU) with a number of regulatory authorities and governing bodies and is currently developing one with Whaikaha. There is an opportunity to emphasise the role of Advocacy Service within these MOU. While a number of regulatory authorities do promote the Nationwide Health and Disability Advocacy Service as part of their notification process this would be strengthened through HDC MOU with these agencies **requiring the Regulatory Authority to actively inform the notifier (if it is a consumer or whānau) of the Advocacy service and to provide a copy of the Code of Rights**. Much like providers are required to do under the 1996 Regulations, Schedule; 1 (3).

30. Further, Regulatory Authorities would also be strongly encouraged to develop restorative approach within their notification pathway (see restorative approach). Key funding and policy setting agencies, e.g Whaikaha, Ministry of Health, Health NZ and ACC would also be encouraged to consider the promotion of restorative practice in their policies and performance indicators of funded services and to highlight the role of the Advocacy service in any MOU HDC have with these agencies.

31. Compliance by providers with the Act could be strengthened through monitoring or funding organisations such as Ministry of Health (via HealthCERT) and Whaikaha. For example in the past, HealthCERT, required residential services to undertake education with Advocacy services on the Code of Rights. HealthCERT removed this requirement around 2022, and engagement by Advocacy Service with Residential services has noticeably declined. Older persons in residential care are considered to be particularly vulnerable.

32. In addition, HDC recently released a report on Residential Disability services following a report commissioned by Whaikaha[7]. Both reports called for sharing of complaints to enable quality improvement and learnings and **support for increasing the role of the Nationwide Health and Disability Advocacy Service in supporting people who live in residential disability services**. The HDC report in particular noted that 'raising awareness of the Code is a central aspect of an advocate's role and advocates have a particular focus on ensuring that people in residential settings are aware of their rights'. Accordingly, key organisations like HealthCERT should be approached to reinstate requirement for both residential and residentially disability providers to engage with Advocacy service and to receive education on Code of Rights to both staff and residents (and their whānau).

33. Whaikaha could also require disability services they monitor and or fund to actively inform and support consumers access advocacy services as part of their funding performance requirements.

34. Recommendations:

    a. HDC MOU with funders and monitoring agencies to include the need for funded services under their oversight to actively promote the Code and the Advocacy Services to consumers and whānau (ideally this would be reportable and reports shared with HDC)

    b. HDC MOUs with regulatory authorities to include requirement to promote the Advocacy service to consumer / whānau notifiers

    c. HDC MOUs with regulatory authorities to encourage the use of restorative practice within their notification process

    d. s34 / s38 referral - when decision to refer a complaint to a Regulatory Authority, HDC to consider including comment where appropriate that the authority inform the complainant of the Advocacy service to support them in their complaint as a way for the authority to proactively promote the service (in line with the MOU)

    e. MoH through HealthCERT to reinstate requirement for Residential services (including residential disability) to engage with the Nationwide Health and Disability Advocacy service at least once annually. The engagement should be based on information sharing and education

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[7] R. Schmidt-McCleave, 15 Oct 23, Final Report: Review of Whaikaha of policies, processes, and practices for managing complaint about IDEA Services Limited

on the Code. The expectation of HealthCERT is that consumers and whānau are proactively informed about the Code and support provided by the Advocacy Service

Strengthening Compliance through other Regulations – Ngā Paerewa Health and Disability Services Standards (NZS 8134:2021)

35. The Ministry of Health through the Ngā paerewa Health and disability services Standard acknowledges the Code of Health and Disability services Consumers' Rights and incorporates this within its standards, notably standard:

    a. Standard 1.3 – My rights during service delivery including:

        i. 1.3.4 – My service provider shall provide facilitate support for me in accordance with my wishes, including independent advocacy

    b. Standard 1.7.5 - I shall have informed consent in accordance with the Code or Health and Disability Services Consumers' Rights

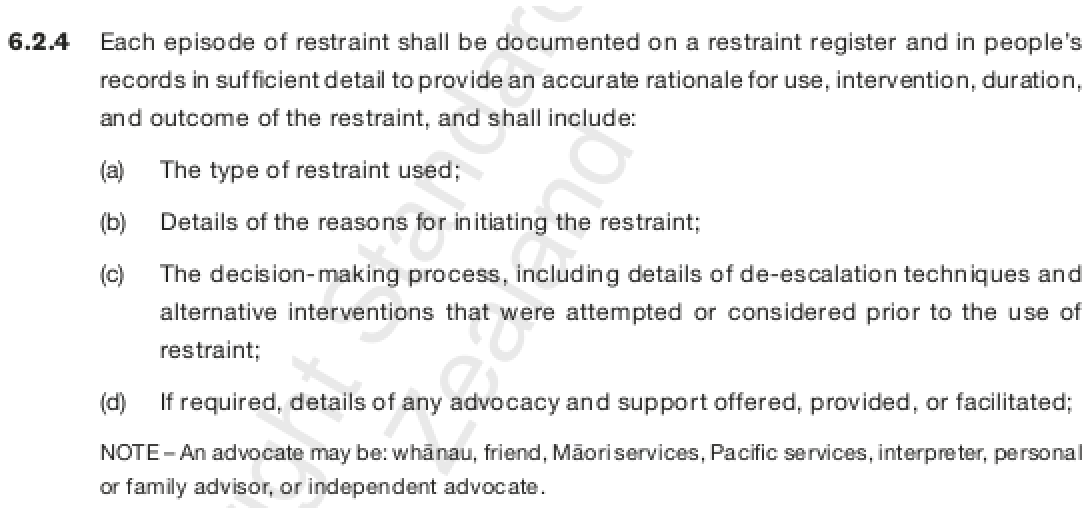
    c. Standard 1.8.3 - My complaint shall be addressed and resolved in accordance with the Code of Helath and Disability Services Consumers' Rights, and

    d. Standard 1.8.5 - The Code of Health and Disability Services Consumers' Rights and the complaints process shall work equitably for Māori

36. Further, the Code is emphasised in the front of the standards under 'Interpretation' 0.2.2. It notes that the standards should be consistent with consumers' rights and organisations obligations under the Code. And that every person or provider subject to the standard should be knowledgeable about the Code and comply with its obligations.

37. However, within the standards itself as shown above (para 35), there is no mention of the (free) Nationwide Health and Disability Advocacy Service, despite this service being directly linked to HDC and Right to Complain - Right 10 of the Code. Noting the mandated function of the Advocacy Service under the Act and its particular role 'to act as an advocate for health consumers and disability services consumers' including to 'represent or assist the person alleged to be aggrieved for the purpoes of endeavouring to resolve the complaint by agreement between the parties concerned'. The omission of any reference to the Nationwide Health and Disability Advocacy Service particularly in standards 1.3 and 1.8 above) would appear to be an oversight.

38. It should be pointed out that in the Ngā Paerewa section 6.2 Safe Restraint there is reference to advocate. See excerpt below:



6.2.4 Each episode of restraint shall be documented on a restraint register and in people's records in sufficient detail to provide an accurate rationale for use, intervention, duration, and outcome of the restraint, and shall include:

(a) The type of restraint used;

(b) Details of the reasons for initiating the restraint;

(c) The decision-making process, including details of de-escalation techniques and alternative interventions that were attempted or considered prior to the use of restraint;

(d) If required, details of any advocacy and support offered, provided, or facilitated;

NOTE – An advocate may be: whānau, friend, Māori services, Pacific services, interpreter, personal or family advisor, or independent advocate.

39. This demonstrates that where appropriate reference to advocate can be included within the Ngā Paerewa Health and disability services Standard including as a 'NOTE'. Further the contracted Advocacy service by HDC, is the only Advocacy service that is authorised under the HDC Act to represent consumers in accordance with the Code of Rights and with authority to resolve complainits in accordance with the Act. This requires the Advocacy service to be independent of providers, practitioners and funders. They are also neutral in regards to complainant issues that are agenda based e.g cancer treatment advocacy, rare disorders advocacy, women's health advocacy etc.

40. Recommendation:

    a. HDC formerly approach MoH – HealthCERT to seek changes in the Ngā Paerewa Health and Disability Services Standard, in order to give effect to the mandate and role of the Nationwide Health and Disability Advocacy Service. It is suggested that areas within the Standards to incorporate role of Advocacy service could be seen in:

        i. 0.3 Definition – (add) Nationwide Health and Disability Advocacy Service. Free, independent advocacy service authorised under the HDC Act 1994 to represent and assist health and disability services consumers under the Code of Health and Disability Services Consumers' Rights (the Code)

        ii. Adding a note referencing the Advocacy service under the following standards:

            1. 1.3.4 – My service provider shall provide facilitate support for me in accordance with my wishes, including independent advocacy

            2. 1.8.3 - My complaint shall be addressed and resolved in accordance with the Code of Helath and Disability Services Consumers' Rights

Other

41. The following are further comments and thoughts on other areas for consideration to improve the effect of the Act and Code:

    a. **Consumer / whānau are interchangeable** in regard to complainant. While there is a need to ensure the complaint involving the person who received the service is supportive of or involved in the complaint process, that whānau (family member/s or other support person/s) can engage with providers, the Advocacy Service and or HDC under the intent of Code of Rights. That is, to raise any concern/s and seek resolution as per HDC Act pathways.

b. **Vulnerable people** should receive particular attention by all parties, funders, providers and regulatory authorities to ensure that every effort is undertaken to support and assist them to receive information and support of advocacy to raise a complaint. A vulnerable person is generally considered anyone who is at risk of inequitable treatment, or unable to act or live independently (e.g reliant on support services in their daily life), or have a condition that limits their ability to act independently and or are under the age of 18 years. The HDC Act does not reference vulnerable consumers, despite the Act being about the protection of consumer rights. **Including the term 'vulnerable person(s)' within the Act and Code will afford greater protection to our most vulnerable** including disabled person, older person, Māori and Pacific Peoples**.** The following definition appears to be used broadly across organizations' to define a vulnerable person :

    i. Crimes Act 1961 s1: A vulnerable adult is someone who because of their age, sickness, or mental impairment, or because they are in detention, is completely unable to remove themselves from care or charge of another person. They may still have the mental capacity to make or communicate decisions.

c. **Issuing Nationwide HDC Policy(s) / Guidance**. HDC is known within the health sector for its guidance on 'Open Disclosure'[8] despite being released in 2019 it is a policy that is often referenced by health providers in their own policies. This is mirrored by Te Tāhū Hauora (HQSC) with their National Adverse Events Policy. It is somewhat puzzling as to why the Guidance on Open Disclosure has not been updated to continue it's relevance e.g the terminology commonly used now is open communications. Given the prominence in which the open disclosure guidance is regarded by providers, it is also puzzling as to why there hasn't be other key guidance issued by HDC, e.g in informed consent, research and informed consent, early resolution. The impact of these nationwide policies on influencing providers is considerable. There is an opportunity for HDC to continue on from the open disclosure guidance and to extend their influence by progressing to inform the sector on best practice. Particularly in light of the unique position HDC has as a sector watchdog.

42. In closing, I have highlighted areas I believe will strengthen the role of HDC and in particular the Advocacy Service. I have also commented upon opportunities for HDC to leverage relationships as well as it's status to influence the sector towards desired behaviours and outcomes that reinforce the overall effect of the code for consumers. Finally, a rights-based approach to complaints is able to be complemented by a relationship approach to supporting consumers interaction with providers. Accordingly, this submission has emphasised the importance of restorative practice within a resolution pathway.

Whāia te iti Kahurangi ki te tūohu koe me he maunga teitei
Aim for the highest cloud so if you miss it, you will hit a lift mountain

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[8] Guidance on Open Disclosure Policies. Health and Disability Commissioner November 2019

Table of Recommendations: Act and Code Review submission by Director of Advocacy

Principles / Purpose of the Act	a. Update the Act and Code as follows: i. HDC Act - Schedule 2, (a), 'to secure fair, empathetic, and timely resolution of complaints…..' and removing the words; simple, speedy. ii. HDC Act, Para 6, Purpose '…….to facilitate fair, empathetic, and timely resolution of complaints…' and remove the words; speedy and simple iii. The HDC (Code of Health and Disability Services Consumers' Rights) Regulations – Right 10 (3), 'Every provider must facilitate fair, empathetic, and timely resolution of complaints'[9]
Restorative Approach	a. Agree that restorative practice / approach (including Hohou te rongo, hui a whānau) is a fitting element within the Act's complaints management pathways. Accordingly, the following wording is recommended within the Act and Code: i. HDC Act s34 (2) 'At any time before or after referring a complaint, in whole or in part, to an agency or person mentioned in subsection (1), the Commissioner may consult with the agency or person as to the most appropriate means of dealing with the complaint *(add footnote 'this can include restorative practice').* ii. HDC Act s37 (2) (a) On a referral of a complaint, under subsection (1), the advocate must – (a) use *their* best endeavours to resolve the complaint by agreement between the parties concerned *(add footnote 'this can include restorative practice')* iii. Add to HDC Act, Schedule; 1, Part 2 – Interpretation. Restorative Practice – is a 'voluntary, relational process where all those affected come together in a safe and supportive environment, to speak openly about what happened, to understand the human impacts and to clarify responsibility for the actions required for healing and learning[10]. iv. HDC Regulations 1996 (The Code) add the following: 1. Schedule; 1 (3) Consumers have rights and providers have duties; Every provider must take action to - (a) inform consumers of their right; (b) enable consumers to exercise their rights; and (c) (new!) facilitate restorative practice 2. Add footnote to; – Right 10 (3), 'Every provider must facilitate fair, empathetic, and timely resolution of complaints'[11] b. Undertake a review of HDC internal complaints management pathways and processes to determine when and how it would be suitable to include consideration of restorative practice approach. Based on the review update internal processes that embeds restorative approach to complaints resolution and aligns with recommended changes to the Act and Code contained within this submission.

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[9] This includes facilitation of restorative practice approach to resolving a complaint

[10] National Adverse Events Policy

[11] This includes facilitation of restorative practice approach to resolving a complaint

Promoting Advocacy Service and 'Code of Rights'	a. Undertake an internal review of ways HDC can reinforce Regulations 1996 - Right 10 (2), (c), (i), and (6), (b), (i), and Schedule 1 (3) b. closely align educational content of HDC and Advocacy to better leverage and highlight benefits of Advocacy with providers on achieving early resolution c. develop and resource a marketing / communications strategy (with Advocacy Services) specifically designed to increase public awareness of Consumer Rights, and d. include consumer groups to inform any publicity campaigns
HDC Relationship with Other Agencies to Promote Advocacy Service	a. HDC MOU with funders and monitoring agencies to include the need for funded services under their oversight to actively promote the Code and the Advocacy Services to consumers and whānau (ideally this would be reportable and reports shared with HDC) b. HDC MOUs with regulatory authorities to include requirement to promote the Advocacy service to consumer / whānau notifiers c. HDC MOUs with regulatory authorities to encourage the use of restorative practice within their notification process d. s34 / s38 referral - when decision to refer a complaint to a Regulatory Authority, HDC to consider including comment where appropriate that the authority inform the complainant of the Advocacy service to support them in their complaint as a way for the authority to proactively promote the service (in line with the MOU) e. MoH through HealthCERT to reinstate requirement for Residential services (including residential disability) to engage with the Nationwide Health and Disability Advocacy service at least once annually. The engagement should be based on information sharing and education on the Code. The expectation of HealthCERT is that consumers and whānau are proactively informed about the Code and support provided by the Advocacy Service
Strengthening Compliance through Regulations – Ngā Paerewa Health and Disability Services Standards (NZS 8134:2021)	a. HDC formerly approach MoH – HealthCERT to seek changes in the Ngā Paerewa Health and Disability Services Standard, in order to give effect to the mandate and role of the Nationwide Health and Disability Advocacy Service. It is suggested that areas within the Standards to incorporate role of Advocacy service could be seen in: i. 0.3 Definition – (add) Nationwide Health and Disability Advocacy Service. Free, independent advocacy service authorised under the HDC Act 1994 to represent and assist health and disability services consumers under the Code of Health and Disability Services Consumers' Rights (the Code) ii. Adding a note referencing the Advocacy service under the following standards: 1. 1.3.4 – My service provider shall provide facilitate support for me in accordance with my wishes, including independent advocacy 2. 1.8.3 - My complaint shall be addressed and resolved in accordance with the Code of Helath and Disability Services Consumers' Rights