

20 December 2019



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Hon Dr David Clark
Minister of Health
Parliament Buildings
WELLINGTON 6160

Dear Minister

Review of Health and Disability Commissioner Act and Code of Health and Disability Services Consumers' Rights

I am writing to inform you about my review of the Health and Disability Commissioner Act (the Act) and Code of Health and Disability Services Consumers' Rights (the Code), and to seek your support to progress legislative amendments from earlier reviews.

Background

The Act requires the Health and Disability Commissioner to regularly review the Act and Code, and report the findings to the Minister of Health. In practice, the Act and Code reviews have been carried out together every 5 years. The last combined review was completed in 2014.

The reviews in 2009 and 2014 made several recommendations for amending the Act. There were some recommendations that were supported by the then Minister of Health and the Ministry at the time but have never been actioned. I discuss these earlier recommendations further below.

My focus on process improvements

I am currently focused on a strategic development work programme that is looking at how this office can achieve best impact within existing legislation. Against the backdrop of a significant growth in complaint volumes in recent years, this work programme is designed to, among other things, increase the efficiency and effectiveness of the HDC complaints resolution process. I believe that focusing on improvements that can be made within existing legislation is the most effective way to ensure this office continues to meet the needs of health and disability service consumers.

Act and Code review

Alongside the strategic work programme, we have been working on a review of the Act and Code. In my view, the Act and Code are generally working well. I have, however, identified some issues where change could be considered.

The most significant issue in recent times has been the question of whether some health and disability research should be permitted to take place in relation to those who cannot provide consent. As you know, following extensive consultation, I have recently published the report *Health and disability research involving adult participants who are unable to provide informed consent* (Right 7(4) report). The report recommends changes to rules in the Code that govern when research involving participants who are unable to provide informed consent can occur. We propose to carry out further consultation regarding these proposed changes in due course.

We will continue to monitor issues relevant to other matters that may warrant changes to the Act and Code. We plan to consult once on both the proposed changes coming out of the Right 7(4) report and any other proposed changes to the Act and Code. This will be the most efficient use of resources and avoid unnecessary duplication of process.

Seeking support to progress legislative amendments from earlier review

As part of my Act and Code review, I have also considered past recommendations from the 2009 and 2014 Commissioner reviews. I confirm my continued support for four earlier recommendations for amendments to the Act. These recommendations were supported by the then Minister of Health and the Ministry at the time, but have never been actioned. I seek your support for including these amendments in any appropriate upcoming legislative vehicle.

The four amendments are:

1. Extending the timeframe for reviewing the Act and Code

The Act requires the Commissioner to review the Act at least every five years, and the Code at least every three years. Since the early days of the Act and Code, the reviews have not resulted in any substantive changes to the Act and Code, and they continue to be time consuming and resource intensive. The recommendation is for 10 yearly reviews, with the option of earlier reviews where necessary.

2. Increasing the maximum fine for an offence under the Act from \$3,000 to \$10,000

The penalty for offences against the Act is a fine not exceeding \$3,000. Offences include obstruction, failing to provide information, or providing false or misleading information to the Commissioner. Increasing the maximum fine to \$10,000 would bring it into line with comparable offences under the Health Practitioners Competence Assurance Act 2003. The large majority of submitters in 2014 supported this proposal.

3. Giving the Director of Proceedings the power to require information

The Act does not provide the Director of Proceedings with the power to collect information to inform decisions about whether to issue proceedings. The Director often needs to seek information from providers, consumers or third parties (for example, ACC) and relies on their cooperation to freely give information. The majority of submissions on this issue supported an amendment to enable the Director of Proceedings to require any person to provide information, up until the Director decides to issue proceedings.

4. Introducing a definition for “aggrieved person”

The Act allows an “aggrieved person” to bring proceedings against a health or disability service provider in the Human Rights Review Tribunal. The term “aggrieved person” is not defined and has resulted in litigation. High Court and Court of Appeal decisions have interpreted “aggrieved person” narrowly, making access to the Tribunal overly restrictive.

Staff from my office are available to work with Ministry of Health officials to help progress these amendments.

Yours sincerely



Anthony Hill
Health and Disability Commissioner