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Dear Ms Doube

Discussion paper on the review of Health and Disability Services Safety Act 2001

Thank you for the opportunity to make a submission on the review of the Health and Disability Services (Safety) Act 2001 (the HDSS Act).

Under section 14(1)(d) of the Health and Disability Commissioner Act 1994 one of the Commissioner's functions is to make public statements in relation to any matter affecting the rights of health and disability services consumers. The HDSS Act is clearly a key piece of legislation in ensuring that health and disability consumers receive care of an appropriate standard. I set out below my comments on the points raised in the discussion paper.

Proposed infringement regime

I agree that it is important for the Director-General of Health to have appropriate tools for deterring transgressions of the certification standards. I do not however have a view on the quantum of fines.

It is important to reward and encourage exceptional quality and safety and I agree that consideration should be given as to the best way of doing so. Longer certification periods and fewer audits would be one approach, although this would have risk of not identifying any decline in quality and safety. Perhaps consideration should be given to awarding a certain rating or status that facilities would be able to refer to as evidence of an exceptional record.

Indeed a more positive focus for audits should be promoted in general. Ideally audits should be viewed as an opportunity for providers to showcase what they do well and provide opportunities for learning and ongoing improvement.

Coverage of the Act

I agree that there are grounds to extend the coverage of the HDSS Act in some areas. However there is also a need to avoid over-regulating providers in situations where the benefit of being covered by the HDSS Act would be minimal.

I support extending the coverage of the HDSS Act to smaller residential care facilities. The discussion document mentions the practice of large service providers purposefully having small facilities with less than five consumers in order to avoid the

need to comply with the HDSS Act. From complaints to this Office I would agree that there does appear to be a practice of having smaller facilities. Providers with a number of facilities, each housing less than five consumers, should certainly be covered by the HDSS Act by virtue of the total number of consumers. However, where there is a stand alone facility with only a few residents or family caregivers, being subject to the same degree of regulation as larger providers may be too much of a burden. This is not to say that small facilities should be excluded altogether, but rather that the degree of regulation may be different.

Similar points can be made in relation to surgical services. Many of the procedures carried out as day surgery are just as risky as those requiring a longer stay in hospital. Also, the current coverage may provide too much of an incentive for providers to ensure that patients stay less than 24 hours. However surgical services would need to be well defined so as to avoid the coverage of the HDSS Act becoming too wide. For example – should it apply to medical centres because general practitioners may carry out mole removals?

Designated audit agencies

Clearly it is important (for both consumers and providers) to have compliance with standards audited consistently. Having a number of different audit agencies will inevitably raise issues about consistency and I agree that providers choosing and paying auditors has the potential to influence the manner in which audits are carried out. Given the concerns outlined in the discussion document, it does seem worth reconsidering single entity undertaking such audits and possibly operating as part of the Ministry of Health.

I look forward to being informed of progress with the review of the HDSS Act.

Yours sincerely

Ron Paterson
Health and Disability Commissioner