

Referral to the Director of Proceedings

Your introduction to the Director of Proceedings, the referral pathway, and commonly asked questions

Who is the Director of Proceedings?

Very occasionally, after the Health and Disability Commissioner (HDC) has found a serious breach of a person's rights under the Code of Health and Disability Services Consumers' Rights (the Code), the Commissioner will refer the case to the Director of Proceedings.

The Director is a lawyer whose role is to review the case and make an independent decision whether or not to take any further action.

This action could involve:

- a disciplinary charge before the Health Practitioners Disciplinary Tribunal;
- proceedings before the Human Rights Review Tribunal; or
- both the above.

How will I know if my case has been referred?

If HDC is considering a referral to the Director, HDC staff will discuss this with the person who made the complaint, and you or your lawyer. If a decision is made to refer a case, HDC's final report will state this. You would then be sent a letter from the Director's team with further information about the process.

What happens once it is referred?

As the Director and the Director's team work independently to HDC, they will not have seen your case before the referral. After it has been reviewed, the Director then decides whether or not to issue proceedings.

You will be informed at each step in the process. Occasionally, you may be asked for further information, or confirmation of some matters. If further action is to be taken, you will be given more information about what will happen next.

You are welcome to contact the Director's team at any time if you have any questions.



What if I am not happy with the decision?

Once the Director has made a decision this cannot be appealed. If you are not happy, you may seek legal advice to discuss what options you may have.

What is the Health Practitioners Disciplinary Tribunal (HPDT)?

The HPDT hears disciplinary charges laid against registered health professionals (eg, doctors, midwives, dentists, nurses). These charges cover instances such as a practitioner's care having fallen below accepted professional standards seriously enough to warrant a penalty being imposed. These charges are not criminal charges.

When a disciplinary charge is laid, a hearing will take place, and a panel will decide if the practitioner's actions are professional misconduct. The panel will always include three members of that practitioner's profession, one public member to represent the public interest and community expectations, and one lawyer, who chairs the proceedings.

If the charge against the practitioner is found to be proved, the HPDT has several options, including cancelling or suspending the practitioner's registration, ordering the practitioner to practise under certain conditions, censuring, fining, and ordering the practitioner to pay some or all of the costs of the investigation and hearing.

What is the Human Rights Review Tribunal (HRRT)?

The HRRT hears cases involving issues of Privacy Law and Human Rights, and breaches of the Code. It can hear cases involving both registered and non-registered health providers. Proceedings may also be issued against organisations such as Te Whatu Ora|Health New Zealand and aged care facilities.

When the HRRT hears a claim, there are three members from an appointed panel. The Chair of the HRRT is a lawyer.

If the proceeding is successful, the HRRT may issue a Declaration that the Code has been breached, and may order that:

- the provider stop engaging in the conduct that was part of the claim;
- compensatory damages be paid to the aggrieved person if there is no ACC cover;
- exemplary damages be paid to the aggrieved person;
- any loss or damage is redressed; or
- any other relief as the Tribunal thinks fit.

Will the media be involved?

Most cases are heard in public and the media can attend, although public and media attendance is not usually high. If your case is to be heard by a Tribunal, the Director (or your lawyer) will discuss name suppression with you.

Name suppression is decided by the Tribunal. In many cases the Tribunal will order permanent name suppression for the consumer/complainant. Tribunals often make interim name suppression orders for the practitioner, leading up to a hearing. If a provider applies for permanent name suppression, the Director's position is considered on a case-by-case basis.

QUESTIONS ASKED BY COMPLAINANTS

• Will I have to give evidence?

It is likely that you will be required to give evidence. One of the Director's team will help you to prepare your evidence, and to prepare for the hearing. Your evidence will be a written statement that you read out at the hearing. The hearings are not as formal as a court hearing.

• Will I get compensation if my complaint is referred?

The HPDT has no power to order compensation.

An award of compensation from the HRRT is rare. This is because the majority of cases referred to the Director are covered by ACC legislation, which prohibits suing for damages.

• Can I bring my own proceedings before the Tribunal?

You cannot take disciplinary proceedings in the HPDT.

If the Director decides not to take your case to the HRRT, you have the right to make a claim yourself.

QUESTIONS ASKED BY PROVIDERS

• Do I have to participate in the process?

A provider cannot be compelled to participate in the Director's process. However, the matter may go to hearing even where a provider has decided not to participate.

• Do I need a lawyer?

You are not obliged to engage a lawyer, but it is recommended. If you choose not to engage a lawyer, the Director's team will inform you of the process, but cannot provide any legal advice.

Contact Details:



Phone: 0800 11 22 33, 04 494 7900

Website: www.hdc.org.nz/proceedings/