

**Public consultation on the Review of the Health and Disability
Commissioner Act 1994 and Code of Health and Disability Services
Consumers' Rights
December 2013**

I am currently undertaking a review of the Health and Disability Commissioner Act 1994 and Code of Health and Disability Services Consumers' Rights (the Review).

The Health and Disability Commissioner Act 1994 requires the Commissioner to undertake reviews of both the Act and the Code, consider whether any amendments are necessary or desirable, and report the findings to the Minister of Health.

Such reports were made to the Minister in 1999, 2004 and 2009 (summarised below). I have now commenced a further review of both the Act and the Code, and am seeking your comments.

1999 Review

The first review was undertaken by the inaugural Commissioner, Robyn Stent who reported her findings to the Minister in October 1999. That report, together with the Cull Report, led to amendments to the Act as part of the Health Practitioners Competence Assurance legislative reforms. The changes are set out in the Health and Disability Commissioner Amendment Act 2003, which came into effect in September 2004.

A number of interested groups also made submissions on right 7(10) of the Code as part of the consultation undertaken during the 1999 review, which resulted in an amendment to the Code by Cabinet in 2004.

2004 Review

The second review of the Act and Code was completed in 2004 by former Commissioner Ron Paterson. The Report to the Minister dated 30 June 2004 confirmed that, overall, the Act and Code operated effectively. However, former Commissioner Paterson recommended that reviews of the Act and Code occur less frequently, that the Act reflect the Office's current practice of honouring Treaty principles, and that the Code be amended in relation to the "best interests" test for research involving consumers who are not competent to consent. Those recommendations have not led to any amendment of the Act or Code.

2009 Review

The third review of the Act and Code was undertaken in 2009 by former Commissioner Ron Paterson. The Report to the Minister dated 30 June 2009 confirmed that the Act and Code were working well, however several amendments to the Act and Code were recommended. The Minister agreed to amend the Act to:

- provide that Part 2 of the Crown Entities Act, except section 46, would apply to the appointment and removal of a Deputy Commissioner in the same manner as it applies to the appointment and removal of a Commissioner;

- clarify that the Director of Proceedings may take action only upon referral from the Commissioner; and
- amend the title of section 38 to “Decision to take no **further** action” to better reflect its purpose.

I continue to support those amendments, as agreed by the Minister, which are included in the present Statutes Amendment Bill which is before Parliament, and accordingly, it is not necessary for submissions to be made on those matters.

I also continue to support the following proposed amendments arising out of the 2009 review:

- To require review of the Act and Code only every ten years with the option of an earlier review if desirable.
- To increase the maximum fine for an offence under the Act from \$3,000 to \$10,000.
- To substitute the phrase “aggrieved person” for the phrase “the complainant (if any) or the aggrieved person(s) (if not the complainant)”.
- To enable the Director of Proceedings to require any person to provide information relating to a matter under consideration, until a decision has been made to issue proceedings, subject to section 63 of the Act.

Current Review

I welcome your thoughts and feedback on the following questions:

- Do you think that the Act should be amended in any way? If so, please detail which section(s) of the Act and reasons for that amendment.
- Do you think that the Code should be amended? If so, please detail which Code right(s) and reasons for that amendment.
- Do you have any comments on the operation of the Act and Code in general?

If have any enquiries about the Review, please contact Senior Legal Advisor Sarah Royal, on 04 494 7900 or sroyal@hdc.org.nz.

Your submissions

Submissions may be made orally (via the HDC 0800 line: 0800 11 22 33), emailed to hdc@hdc.org.nz, made electronically via our website www.hdc.org.nz/the-act--code/review-of-the-act-and-code-2014, or posted to:

Review of the HDC Act and Code
Health and Disability Commissioner
P O Box 11934
Manners Street
WELLINGTON 6142

Submissions must reach my Office no later than **5 February 2014**.

Next steps

Once the submissions received have been reviewed, a consultation summary, along with any recommendations arising out of the Review will be published. I will let you know

when this occurs. If, as a result of the Review, I consider that amendment of the Code may be warranted, I will consult further on those specific changes.

I look forward to hearing your views.

Anthony Hill
Health and Disability Commissioner