



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Act and Code Review consultation questions | Ngā pātai matapakinga

This document contains all the questions we are asking as part of the Act and Code Review consultation. Aside from the required questions, you can answer as many or as few as you'd like. When completed, please either email it to review@hdc.org.nz or post it to us at PO Box 1791, Auckland, 1140.

Please visit <https://review.hdc.org.nz> to answer these questions online.

Your details (required)

It's important for us to know a bit about you so that we understand whose views are being represented in submissions. It helps us to make sure that any changes we recommend will work well for everyone and have an equitable impact.

1. What is your name?

2. What is your email address?

3. Are you submitting as an individual, or on behalf of an organisation or group?

☐ I am submitting as an individual

X I am submitting on behalf of an organisation or group

4. How did you hear about this consultation? (please select)

☐ HDC website

☐ News media

☐ Social media

☐ Internet

X Through my job

☐ Word of mouth

☐ Other (please specify below)



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Please answer the following questions **if you are submitting as an individual**. If you are submitting on behalf of an organisation or group, please go to page 3.

Which of these services do you engage with the most? (Please select all that apply)

<input type="checkbox"/> [Redacted]	<input type="checkbox"/> [Redacted]	<input type="checkbox"/> [Redacted]
<input type="checkbox"/> [Redacted]	<input type="checkbox"/> [Redacted]	<input type="checkbox"/> [Redacted]
<input type="checkbox"/> [Redacted]		

What is your gender?

- ☐ Female ☐ Male
- ☐ Another gender (please specify) _____
- ☐ I don't want to answer this question

How old are you?

- ☐ Under 15 ☐ 15 - 17 ☐ 18 - 24 ☐ 25 - 34 ☐ 35 – 49
- ☐ 50 - 64 ☐ 65+ ☐ I don't want to answer this question

What is your ethnicity? (Please choose all that apply)

- ☐ NZ European ☐ Māori ☐ Samoan ☐ Cook Island Māori
- ☐ Tongan ☐ Niuean ☐ Chinese ☐ Indian
- ☐ I don't know my ethnicity ☐ I don't want to state my ethnicity
- ☐ Other/s (please state): _____



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Do you identify as having a disability?

☐ Yes ☐ No

If you are submitting on behalf of an organisation or group:

What is the name of your organisation or group?

[Redacted]

What type of organisation/group is it?

- ☐ Consumer organisation/group (please specify below)
- ☐ Iwi/ Māori organisation/group (please specify below)
- ☒ Health and/or disability services provider (please specify below)
- ☐ Central Government
- ☐ Local Government
- ☐ University/Academic
- ☐ Other (please specify below)

Please feel free to provide any further detail: _____

_____ [Redacted] _____



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Share 'one big thing'

This survey contains structured questions that ask for your feedback on each chapter in our consultation document. If you would prefer to give us your feedback as a whole, by telling us 'one big thing' – you can do so below.

If this is all you want to provide by way of your submission, that's fine by us. We will consider all the submissions we receive.

What is your 'one big thing'?



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Topic 1: Supporting better and equitable complaint resolution

1.1: Did we cover the main issues about **supporting better and equitable complaints resolution**?

Yes, good range.

1.2: What do you think of our suggestions for **supporting better and equitable complaints resolution**, and what impacts could they have?

We have taken the approach of responding to the points raised in your consultation document.

a. Amend Purpose Statement

Disagree. Fair, simple, speedy and efficient resolution of complaints is critical to the complaints process. Broadening the purpose risks diluting this, noting that the Health, Quality and Safety Commission already have a role around restorative practice and hohou te rongo.

Timeliness is crucial and has a huge impact on people, relationships and the effectiveness of recommendations for quality improvement. The introduction of timeframes for each stage, including updates throughout the process would be good. This holds the people undertaking the investigation accountable and complainants and providers know what is happening rather than waiting for months or years to find out where the complaint is at.

b. Clarify Cultural Responsiveness

Disagree. Right 1 already captures the requirement to take into account the needs, values and beliefs of different cultural, religious, social and ethnic groups, including the needs, values and beliefs of Māori.

█ believes in equity for all and further differentiation could suggest a difference in rights for one group over another.



c. Clarify the role of whānau

- i) Right 3: change 'independence' to 'autonomy'

Agree. This is a positive change

- ii) Right 8: strengthen to have whānau involved, even where they cannot be present physically

Unsure. It is not clear what is being addressed by this proposed change. Why specifically whānau (i.e. extended family group), might this be limiting as a support person can be anyone the individual chooses.

Agree that 'present' may be virtually or in person and could be clarified. However, does this create a risk of enabling overbearing families and must be clear it is the individuals' choice.

- iii) Right 10: explicitly allow for complaints to be made to support people on behalf of the consumer.

Disagree. This does happen, but usually where it is an Activated EPOA. Where they are not an AEPOA, it opens up tricky issues with privacy etc. If a support person is making a complaint on behalf of the consumer, it should be with their consent and therefore can be submitted in the consumers voice. The risk around privacy etc could serve to frustrate and give a perception of being obstructive. It could also leave the individual and the provider stuck between support people who have differing views.

d. Ensure gender-inclusive language

Unsure. No real comment on this, except to say we should always seek to be as inclusive as possible and also that care needs to be taken to ensure that inclusive language does not inadvertently serve to exclude other segments of the population.

e. Protect against retaliation

Agree. This should be included in Right 10.



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f. Explicit expectations for provider complaint processes

Disagree. There are already significant compliance requirements around this. Rather than making it just the provider, Right 10 could include some specific expectations (e.g. response, timeframes etc) of any organisation who receives a complaint, including HDC and HD&AS and manage expectations.

g. Strengthen Advocacy Service

1. Right 10 (2) could set an expectation that the majority of consumers will first make a complaint to their provider and only to HDAS / HDC where it cannot be resolved, or there is concern of retaliation etc.
2. Right 10 (2ci) could specifically identify the Health & Disability Advocacy Service
3. A campaign to clearly explain where, how and the process for people to be able to complain. Often people say they had no idea that HDC would take so long before they had an outcome – timeframes need to be clear to them. Advocate for people to approach the provider first and then the option of Health NZ if not satisfied, before escalation to HDC. A clear pathway is needed with clear guidance on what each party can offer / do and the timeframes expected.
4. Encourage providers to refer to HDAS and ask for them to provide support where consumers are struggling to move forward with a complaint.

h. Improve the language of the complaints pathway in the Act

1. Changing 'no further action' to another term

Agree. However, the example of 'no investigative action' and leading with 'no' is not particularly resourceful. It needs to be a statement that engenders confidence and moves things on without dismissing the validity of the consumers complaint, such as 'investigative actions complete'.

2. Changing 'mediation conference' to another term



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Agree. However, the example of ‘facilitated resolution’ sets up an expectation (it will be resolved and therefore suggests that the consumers complaint is valid and resolvable) and is a bit of a word salad. It needs to be a term that can be understood by people who don’t do this every day.

1.3: What other changes, both legislative and non-legislative, should we consider for **supporting better and equitable complaints resolution**?

Communication. There have been times when HDC have “not received” the information sent and this impacts on time, trust in the process and outcomes for residents and families. When the information is received an acknowledgement needs to be sent so the sender can ensure it has been received.

Also, clear communication if a case can be closed. If the advocacy service is involved, sometimes it is not clear if the case is closed following their involvement.

Topic 2: Making the Act and Code more effective for, and responsive to, the needs of Māori

2.1: Did we cover the main issues about **making the Act and the Code more effective for, and responsive to, the needs of, Māori**?



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The one area that needs to be addressed is the process of restorative justice and giving Māori the opportunity to meet with the affected parties even before the complaint is escalated to the HDC and afterwards because as we are aware a lot of the HDC complaints can take years to resolve and to leave these cases open for so long does not respect the 'Tikanga' of the situation.

Looks like a good range of feedback.

2.2: What do you think about our suggestions for **making the Act and the Code more effective for, and responsive to, the needs of Māori**, and what impacts could they have?

As per 1.2a and 1.2b

2.3: What other changes, both legislative and non-legislative, should we consider for **making the Act and the Code more effective for, and responsive to, the needs of Māori**?



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Recognition of the role of whānau, iwi and hapu in the decision-making process that may not necessarily be reliant on one person for example the activated EPOA.

Topic 3: Making the Act and the Code work better for tāngata whaikaha | disabled people

3.1: Did we cover the main issues about making the Act and the Code work better for tāngata whaikaha | disabled people?

a. Strengthen disability functions

Disagree. Not clear what value is added by HDC separating out separate consumers.

b. Update definitions relating to disability

Agree.

c. Strengthen references to accessibility

1. Right 5 to reference accessibility.

Disagree. If this means physical accessibility, significant thought needs to be given as this is not always reasonably practicable

2. Right 10 remove 'reasonably practicable'

Disagree. Unless all providers have reliable access to interpreters, it is unreasonable to expect the onus to be wholly on providers. There also needs to be some onus on the consumer to enable dialogue

d. Strengthen right to support to make decisions

i. Right 5 include reference to right to support to understand information

Unsure. Depends how it is worded. There is also an onus on consumer to ensure they understand information and a risk that



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supporting understanding morphs into advising and blurs the line on informed choice.

- ii. Right 7 align with adult decision making capacity law
Unsure. Agree that language used needs to support a range of competences.
- iii. Right 7 (4) change from 'views' to 'will and preferences'
Unsure. Is there a risk that people will see 'will' in the formal sense of last will and testament, rather than their desires? 'desire and preferences'?

3.2: What do you think of our suggestions for **making the Act and the Code work better for tāngata whaikaha | disabled people**, and what impacts could they have?

3.3: What other changes should we consider (legislative and non-legislative) for **making the Act and the Code work better for tāngata whaikaha | disabled people**?



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Topic 4: Considering options for a right of appeal of HDC decisions

4.1: Did we cover the main issues about **considering options for a right of appeal of HDC decisions**?

As a general point, anything that further extends the process and prevents a complaint reaching a point of closure in a timely fashion is a retrograde step, which will only prolong pain and anxiety.

By this stage a complaint will have been through multiple organisations it's assumed that HDC have a robust internal review process and there are other avenues available for consumers if they feel HDC have not heard their complaint.

4.2: What do you think about our suggestions for **considering options for a right of appeal of HDC decisions**, and what impacts could they have?

a. Introduce a statutory requirement of HDC decisions

Disagree. HDC can already undertake internal reviews, which should have the original decision-maker not being part of this, unsure what benefit would be derived from having it as a statutory requirement.

b. Lower the threshold for access to the Human Rights Review Tribunal.



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Unsure. This would need to be appropriately resourced so individuals have resolution as quickly as possible and by lowering it, would not open the door for vexatious complainants.

4.3: What other **options for a right of appeal of HDC decisions**, both legislative and non-legislative, should we consider?

As mentioned there should be an opportunity, as part of the appeal process, for those involved in the case to be able to meet again and consider whether the outcome was satisfactory for all involved and whether making a complaint to the HDC was the appropriate action at the time.

Topic 5: Minor and technical improvements

5.1: What do you think about the issues and suggestions for **minor and technical improvements**, and what impacts could they have?

Suggestion for the Act and Code

- a. Revise the requirements of the Act and Code

Unsure.



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b. Increase the maximum fine for an offence

Unsure. There's already a route through the Director of Prosecutions anyway. It's unlikely to be a deterrent, so it's a punishment, but how will this actually improve things and is there a risk it takes money away that could be used to make improvements?

c. Give the Director of Proceedings the power to require information

Disagree. If it's got to the DoP, it should have been thoroughly investigated and the information already available. There's a risk of another layer of investigation going off in a different direction or implies the original investigation was not comprehensive enough.

d. Introduce a definition of 'aggrieved persons'

Unsure. If this is a type of person that needs to be identified, then defining it probably makes sense.

e. Allow for substituted service

Unsure

f. Provide HDC with ground to withhold information where appropriate.

Agree. Although grounds would need to be clear.

g. Expand the requirement for written consent re sedation.

Unsure

h. Clarify that written consent required when significant risk of adverse event

Agree

i. Clarify the Code's definition of 'teaching' and 'research'

Unsure. If there has been confusion, then clarification makes sense.



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j. Respond to advancing technology.

Consideration needs to be given to the role of AI in the gathering of information and the use of this information when determining whether there has been a breach or not.

At times, HDC investigations seem grow in scale and scope. Thinking about how HDC could ensure fair, timely and effective resolution, keeping investigation scope tight to the issue and using other processes e.g. HQSC or HealthCERT if there is thought of wider issues may help. By being clear on the scope of the investigation and complaint, this could reduce the burden on HDC and improve the service for the complainant.

5.2: What other **minor and technical improvements**, both legislative and non-legislative, should we consider?

1. Improve systems and processes
2. Allow complainants to be able to track their case and provide timescales
3. Provide advice upfront on potential resolution timeframes and suggest provider / HDAS / Health NZ etc as other routes for resolution
4. A process that allows providers to put forward their case where they believe a complaint is vexatious or frivolous.



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5.3: What are your main concerns about **advancing technology** in relation to the rights of people accessing health and disability services?

5.4: What changes, both legislative and non-legislative, should we consider to respond to **advancing technology**?

Publishing and data protection

This section provides important information about the release of your information. **Please read it carefully.**



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You can find more information in the Privacy Policy at hdc.org.nz.

Being open about our evidence and insights is important to us. This means there are several ways that we may share the responses we receive through this consultation. These may include:

- **Publishing all, part or a summary of a response** (including the names of respondents and their organisations)
- Releasing information **when we are required to do so by law** (including under the Official Information Act 1982)

Publishing permission

May we publish your submission? (Required)

- ☐ Yes, you may publish any part of my submission
- X Yes, but please remove my name/my organisation/group's name
- ☐ No, you may not release my submission, unless required to do by law

Please note any parts of your submission you do not want published:

Reasons to withhold parts of your submission



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HDC is subject to the Official Information Act 1982 (The OIA). This means that when responding to a request made under the OIA, we may be required to disclose information you have provided to us in this consultation.

Please let us know if you think there are any reasons we should not release information you have provided, including personal health information, and in particular:

- which part(s) you think should be withheld, and
- the reason(s) why you think it should be withheld.

We will use this information when preparing our responses to requests for copies of and information on responses to this document under the OIA.

Please note: When preparing OIA responses, we will consider any reasons you have provided here. However, **this does not guarantee that your submission will be withheld**. Valid reasons for withholding official information are specified in the Official Information Act.

☐ Yes, I would like HDC to consider withholding parts of my submission from responses to OIA requests.

I think these parts of my submission should be withheld, for these reasons:

Follow up contact



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If needed, can we contact you to follow up for more detail on your submission? (required)

☒ Yes, you can contact me

☐ No, do not contact me

Further updates

Would you like to receive updates about the review?

☒ I'd like to receive updates about the review

☒ I'd like to receive updates from HDC about this and other mahi

Thank you

We really appreciate you taking the time to share your thoughts with us. If you have provided your details, we'll keep you updated on progress. If not, feel free to check our consultation website <https://review.hdc.org.nz> for updates or to contact us if you have any questions. We can be reached at review@hdc.org.nz.