

**SUBMISSION ON THE REVIEW OF THE HEALTH
AND DISABILITY COMMISSIONER ACT 1994 AND
THE CODE OF HEALTH AND DISABILITY
SERVICES CONSUMER'S RIGHTS**



Introduction

- 1 Take Notice is a Kaupapa Māori Lived Experience led organisation with a focus on enabling tāngata whaiora to elevate lived and living experience.

We welcome the opportunity to submit on the review of the Health and Disability Commissioner Act 1994 (the Act) and the Code of Health and Disability Services Consumers' Rights (the Code) in Aotearoa. Below is the Take Notice submission that was led out by Māori with lived experience engaged in our internship programme. This ensures our submission is guided by the kōrero taonga of Take Notice interns as well as creating an opportunity for the interns to be involved in the submission process from the beginning to the end.

- 2 It is our understanding that this review must be grounded in the broader context of historical and ongoing breaches of Te Tiriti o Waitangi, which continue to affect Māori. As Māori living with the effects of historical and intergenerational trauma caused by colonisation, we have focused on highlighting the ongoing struggle for our voices to be heard and needs met throughout the complaint resolution and appeal process.

Recommendations

3 To better meet the needs of Māori during the complaint resolution process and right of appeal we propose the following recommendations.

4 Improving the Complaint Process for Māori

- Increase Māori representation in all areas of HDC, especially in decision-making positions.
- Establish a wellbeing support system, including dedicated Māori advocates and Māori Lived Experience advocates to enable Māori to navigate the HDC complaint process.
- Redesign the complaint process to incorporate Māori values and practices from entry to exit, including the appeal process.
- Actively listen to the diverse voices of Māori, including Māori Lived Experience and actively involve us in the design and implementation of complaint processes to ensure they are culturally safe and do not reproduce historical patterns of marginalisation.
- Establish a Māori advisory board with decision making power to oversee the re-design, implementation and auditing of processes to ensure Te Tiriti obligations are upheld.
- Provide comprehensive training to all HDC staff on the historical impacts of colonisation on Māori health and wellbeing of today. Provide detailed explanations of their decision-making process in the form of publicly available decision summaries (with proper privacy protections).

5 **Create a Mana Enhancing, Mana Restoring Appeal Process**

- Establish the right to appeal against the Commissioners decision.
- Incorporate key Māori values such as manaakitanga, whanaungatanga and kaitiakitanga into every step of the appeal process.
- Begin and end appeal hearings with karakia and allow for mihi to establish connections and set the right tone.
- Provide dedicated cultural support, wellbeing support and advocacy throughout the appeal process.
- Provide facilities and time for whānau hui during the appeal process to allow and encourage collective decision-making and support.
- Ensure the choice to conduct the entire appeal process in Te Reo Māori with qualified interpreters available if needed.
- Include cultural experts or kaumatua on appeal panels to ensure complaints are investigated through a cultural lens, and that cultural perspectives are considered.
- Include Māori Lived Experience on appeal panels to support the panel to understand the experience from a lived experience perspective when investigating complaints.
- Where appropriate, hold appeal hearings on Marae or in other culturally significant spaces, following proper tikanga protocols.
- Allow for more flexible times that respect grieving, consultation and decision-making.

6 Other Recommendations

- Lower the threshold for appeals to make the process more accessible.
- Ensure all communications about the appeal process are available in Te Reo Māori and plain English.
- Establish and communicate clear times for the appeal process, recognising the stress and uncertainty delays can cause.
- Regularly seek feedback from Māori and Māori with Lived Experience who have gone through the appeal process to continually refine and improve it.



Current Challenges in the Complaint Process

7 Historical Context

- Colonisation and centuries of harmful government laws and policies have resulted in significant disparities for Māori in health, education and economic outcomes. These historical injustices are not just issues of the past but continue to shape how Māori experience and interact with government institutions including healthcare and complaint resolution processes.
- The disconnect between promises of cultural responsiveness, actions that undermine Te Tiriti obligations and ethnic disparities in the health system, creates a significant barrier to trust in institutions and Crown entities, including the HDC.

8 Ongoing Impacts

- The history of marginalisation, and persistent experiences of systemic and institutional racism towards Māori has done little to improve our confidence in health services, including complaint processes that often privilege western perspectives and ways of operating. Māori with Lived Experience of mental health and/or addiction often face additional layers of stigma and discrimination within the health system, especially when making complaints.

“Because me personally, I wouldn't say I like hospitals. And whenever I go to a hospital, I take an advocate with me, who happens to be a white, middle-aged woman. And she gets things done. I will ask, but it won't happen because of skin colour. But she asks, and things happen. So, my thing is, I've always taken an advocate with me now. Because I've made complaints, and they go nowhere.”

- It is an ongoing struggle for Māori to see Te Tiriti o Waitangi honoured in practice, not just in rhetoric. We are pleased HDC have amended the complaint process that includes the use of hui-a-whānau, hohou te rongo and creating a director Māori leadership role that is resourced. However, this process needs to actually be working towards a resolution with clear outcomes, not just a hui full of promises that only delays the process and actually goes nowhere.

- 9 • We recommend that any changes to the complaint resolution process must acknowledge this context and actively work to rebuild trust with Māori communities.

10 Lack of support through the complaint process

- The HDC's current complaint resolution process provides inadequate support to people seeking resolution. Lack of cultural roles and support through a Westernised complaint process further compounds the challenges we must navigate and endure for a resolution that may or may not happen.

"Seeing a brown person in front of me who is going to support me, I feel very comfortable."

11 Systemic Complexities

- The complaint process involves multiple steps and potential pathways which can be quite confusing and creates significant obstacles for Māori seeking redress. There is a pervasive sense that the complaint process does not deliver tangible results for whānau Māori.

"If I'm making a complaint, will it go anywhere? Whānau should not experience this, either way."

- The complexity of the complaint process requires extensive effort and engagement from us and our whānau. This undue burden is placed on people who are often already in a vulnerable position, and contributes to a sense of powerlessness and frustration. These barriers often deter Māori from seeking a resolution to legitimate grievances.

12 Unclear accountability measures

- The current complaint and appeal processes do not always explain, or explain well why certain complaints are not pursued or why particular recommendations are made or not made. There is a lack of accountability measures for healthcare providers and HDC to follow through on recommendations. This undermines trust in the system and potentially discourages Māori from engaging with these processes.

"I don't like the idea of whanau having to knock on doors and search for help with something that isn't right for them as a service user. That is the job of the HDC to be there."

"It's all well and good to sit here and make everything sound good. It's the follow-through? Ideally, this is what should happen, right? But is that ideal? Is that gonna happen?"

13

We recommend HDC provide regular, clearer communication about how decisions are made and why, both in the complaint process and in appeals. We also recommend there should be clear consequences for healthcare providers who consistently do not address issues or implement recommendations. This could involve a tiered system of warnings, public reporting, funding cuts and ultimately, referral to regulatory bodies for persistent non-compliance.

Challenges with the Current Right of Appeal

14 Accessibility Issues

- The current system sets an unreasonably high threshold for appeals, making it difficult for people to access this right. The high threshold means that many valid complaints are dismissed without proper consideration. Furthermore, not only does it prevent legitimate appeals from being heard but also contributes to a sense of wariness among Māori when dealing with the health system. It reinforces the perception that the system is designed to protect itself rather than serve the people.

"if you are going to do an appeal, like you shouldn't have to fight so hard for it because it's pretty black and white if there's something that needs to be seen."

15 Support During the Appeal Process

- The current appeal process does not offer dedicated cultural support and advocacy. It is commendable that HDC have created more of an inclusive restorative process for resolving complaints. However, this is not reflected in the appeal process.



16 Lack of Cultural Consideration

- Māori feel culturally unsafe in the health system, and this is replicated in the HDC complaints system. The appeal process does not adequately consider our cultural perspectives or values and often does not uphold our mana as Māori, which can deter us from pursuing appeals.
- A mana enhancing appeal process would create a culturally safe environment for Māori seeking a resolution to complaints and help to restore balance, not just for the individual, but for their whanau and the wider hapori they come from. HDC must address the critical need for an inclusive, mana enhancing appeal process that is fair and responsive to Māori.

17 Conclusion

In conclusion, the changes we have recommended are not just improvements, but necessary steps towards creating a more equitable and responsive health system. While we appreciate the steps being taken to improve the Act and the Code, we emphasise the need for meaningful systemic change. We urge HDC to consider these recommendations seriously and take bold, transformative action and involve Māori in every step of the review, design, implementation and auditing process.

*“Ko ngā pae tawhiti whāia kia tata, ko ngā pae tata whakamaua kia tina”
“The potential for tomorrow is determined on what we do today”*

Contact Us



www.takenotice.co.nz