



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

☒ 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

☒ 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)

- ☐ Health services ☐ Disability services ☐ Mental Health services
☐ Addiction services ☐ Aged Care Services ☐ Kaupapa Māori services
☐ Other services (please specify) _____

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: Health Service Provider

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’?

The Current process already takes too long which is distressing for Consumers and staff. This has been compounded by the significant increase in return questions (now receiving 12 pages of questions, previously around 3 pages) required for response to HDC reviews. Adding an additional appeals process carries significant risk or prolonging this process resulting in more distress for consumers and clinicians.

Opening options for consumer appeal following an HDC review process undermines the value of the HDC. As the regulating body, HDC should have the final say, regardless of whether those decisions are unpopular.

Topic 1: Supporting better and equitable complaint resolution

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

Yes



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

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

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**?

Yes



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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?

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**?

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**?

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?



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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?**

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?**

Yes

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?

Proposed amendments to the Right of appeal, while may be helpful, raises questions about balancing rights of clinicians as human beings, with rights of consumers. It assumes that all consumers are reasonable.

Going through the HDC complaints process currently takes a significant amount of time. This time can create high levels of stress and distress, not only for the consumer complainant but also for the clinician at the centre of the complaint.



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While the right to appeal may be valid in some instances, blanket coverage may result in vexatious relitigating on the part of some consumers.

As an independent body, the HDC should have the last say, even if that decision is unpopular.

There are other avenues for appeal and Opening up the appeals process in the manner proposed could put clinical teams in a position where they are being 'prosecuted' for the same event over and over again in a significantly protracted process that's not helpful for anyone.

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

What the next steps are after HDC. Relitigation unless there is clearly malicious intent or gross negligence should not be an option.



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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?

- Proposed change to basis of consent on an assessment of ‘Affected decision making capacity’ as opposed to ‘diminished competence’. Implication is that assessment of capacity becomes significantly complex as clinicians would need to ascertain level of capacity.
- Clinicians would be expected to ascertain and uphold a consumers “will and preference” as opposed to just their “view” – this will have implications for the Shared Goals of Care Process, Surgical procedures and prescription of medications. In some instances, consumers expectations about what is physically possible in healthcare is unrealistic so how will this be balanced and reviewed with what is fair and reasonable practice?
- Written informed consent will be required for all procedures requiring “medication designed to alter level of consciousness, awareness or recall”. This would have implications for all procedures for people on any of these types of medications. This could have implications for patients being transported to hospital after having loading doses of narcotics etc.
- Must provide opportunity for one or more support person to be physically present or if the support person cannot be physically present, provide opportunity to support people in other ways – Implications for national visiting policy which will need to be aligned, Implications for Hospital Security which needs to be investigated further & Implications for telehealth
- Providing an interpreter is an absolute (‘where reasonably practicable’ will be removed). Implications particularly for clinical after-hours services and interpreter services. If an interpreter is not offered the clinician would be found in breach of the act. This could potentially be problematic in rural & remote areas or where there is not dialect-specific interpretation available.
- Proposal to add in an appeals process. Consumer would have right of appeal if HDC findings are not to their liking. Implications for significantly extended timeframes to HDC process and all the associated distress that goes with that (for both clinician and consumer).



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

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**?



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Publishing and data protection

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

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
- ☒ 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:



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Follow up contact

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.