Health and Disability Commissioner Act and Code Review Consultation July 2024

Thank you for the opportunity to respond to the request for feedback on the review of the Health and Disability Commissioner Act and code review.

This submission has been compiled jointly on behalf of The College of Nurses Aotearoa, Nurse Practitioners NZ and Nurse Executives Aotearoa, following consultation with our membership.

The College of Nurses Aotearoa is a professional association providing professional advice and indemnity support e.g. when an RN or NP has a complaint made against them via HDC.

Nurse Practitioners NZ (a Division of the College of Nurses Aotearoa) specifically focuses on the issues affecting Nurse Practitioner practice.

Nurse Executives Aotearoa Tūmuaki Néhi Aotearoa focuses on the development and support of nursing leaders.

One big thing

What is your 'one big thing'?

The College of Nurses Aotearoa, as stated, provides professional advice and support and professional indemnity for Nurses. One of the key areas of support required is for Registered Nurses and Nurse Practitioners who have been notified of investigation by the Health and Disability Commissioner. In the period 2022-2023, we experienced a 40% increase in members seeking support and activation of professional indemnity in

response to HDC investigation. It is of note that 80% of the complaints were made against Nurse Practitioners.

Processes are long and distressing for the patient/ whanau who has made the complaint and also for the provider of services who are the subject of the complaint. The lack of feedback giving any idea of progress on the investigation and likely timelines for a report being available for review is of major concerns. Recently you will be aware that a Nurse Practitioner went to the media in regard to delays in progress of the complaint investigation. It is noted that the length of time taken does not appear to have a bearing on whether or not there is a breach finding against the practitioner.

A process whereby fewer complaints are escalated to the HDC for full investigation is supported. A mechanism where progress reports can be provided with an indication of a timeline would alleviate some of the stress for both complainants and the provider who has been complained about who is the subject of the investigation.

The current process is perceived as a punitive and a "name, blame and shame" approach that increasingly leads to suspicion, and fear. The process is perceived some providers as a process whereby they are guilty until proven innocent. Of note is that some practitioners who have been investigated end up leaving the profession – irrespective of outcome of the investigation or breach finding, as they find the process so distressing.

Topic 1: Supporting better and equitable complaint resolution

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

- Are there statistics available on how frequently each of the options are used by the HDC when assessing which form of investigation or response will be used ? Our member experience is that most often, a complaint appears to be reviewed via a full investigation, with only a small number being reviewed via and advocacy service in the first instance.
- It is not clear that changing 'upholding mana' reflects people-centred systems. Recommend that 'fair, simple, speedy, and efficient' is not replaced. Add but don't remove the intent for systems that reflect simple, speed and efficient resolution.

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

- A revision of a triage system is supported, which would allow the Commissioner to assess relative significance of complaints and utilise less formal methods of complaint resolution where appropriate.
- Triage processes would assist the Commissioner to meet their timeframes within their current resources as the delay in closing cases
- If a complaint is received where the complainant did not first approach the service/clinician and to give them an opportunity to respond, these complaints should be re-directed to the service/clinician by regional HDC advisors rather than moved to formal full investigations.
- A restorative approach of attempting to reach resolution or mediation, rather than progressing to investigation is supported. It is acknowledged that some cases will still require a full and thorough investigation process, but early and appropriate action on complaints at a lower level could be used more often.
- It is understood that the purpose of the HDC is for the protection of consumers and in upholding consumer rights. This is critical Better education for clinicians, especially those new to the country, is required especially as we have such a high

proportion of Internationally Qualified practitioner in the health and disability sector.

- Occasionally complaints are vexatious or motivated by personal reasons, other than the intent of the Act – typically to hurt or professional damage an individual who happens to be a health practitioner. Where these factors become clear – what processes are in place for support of the subject of the complaint in this context?

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

- Changes to the wording in Right 3 to dignity and autonomy is **supported**
- Strengthening Right 8 in regard to whanau involvement t is **supported**
- Clarifying Right 10 allowing for support people to complain on behalf of a consumer is **supported**
- In times of national emergency such as the pandemic response, a national process could be implemented to respond to complaints where they are related to provision of services under national public health directives.
- A recent example were the large volume of complaints made during the COVID pandemic during various lockdowns and MoH directives to providers in terms of how services should be delivered. Some members of our organisations received patient complaints about routine non-face to face care for those patients who were unvaccinated, despite this being a government directive at the time
- In our view, complaints of this nature could have been managed by the HDC and MoH centrally, as providers were left to respond to highly upset patients individually, taking time for an already stretched health service. We understand that the significant surge of complaints at this time has also put pressure on the HDC and has, as a result, delayed the investigative process for other complaint that are being made
- The current process is often prolonged, taking up to several years from initial complaint through to the final decision. This is an exceptionally stressful period for both complainant and the individual(s) being complained about and is

causing frustration and psychological harm to both patients and providers. A complaints process that doesn't work well and in a timely manner can make an already very challenging and difficult process worse and can re traumatise those involved with the complaint .

- Expectations for both the complainant and those being complained about could be manged better, with clear timelines for period of investigation check ins through the process giving updates.
- We note that feedback has been received in regard to a more people centred approach. In our view, a process that has the patient/complainant at the centre but does take into consideration the systems factors that contributed to an outcome, or an experience must still be considered. To take an approach that addresses these failings or contributing factors as well as any personal or professional concern about the provider who is subject to the complaint investigation will be more balanced and fairer.

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?

The need to update the language in the Act and the Code in acknowledging Te ao Māori and clarification of cultural responsiveness is **supported .** Making the Act and the Code effective for, and responsive to, the needs of Māori will support the Crown to honour its obligations under te Tiriti.

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?

The intention to more explicitly include legislated safeguards to make sure that the application and interpretation of te ao Māori values and tikanga occurs in a culturally safe way **is supported.**

Action to more effectively address the needs of Māori through changes to both Operative/ general Tiriti clauses and suggestions for descriptive/specific Tiriti | Treaty provisions in the Act, ordered by the Articles of te Tiriti | the Treaty **is supported.**

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?

It is critical that appropriate support is provided for people with a disability to b supported in ways they find most appropriate . Solutions must be flexible enough to cater for the needs of people which differ widely.

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?

Safe and adequate support requires safe staffing levels which in turn need appropriate funding. When developing a national strategy to protect the promotion and rights of disabled people funding models should be addressed.

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?

A clear framework is needed so roles and responsibilities of agencies involved know what their boundaries are and when to involve another agency. For example, HDC, WorkSafe and Whaikaha. The process needs to clarify what the expected response is and when from what agency. Interagency communication and workflow could be improved.

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?

It is unclear what is being proposed in regard to changes to the process whereby a provider or complainant can challenge the outcome of a 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?

At the outset of any complaint's investigation, expectations should be clear. If changes are to be made to change the process, there should be a time frame relating to how long after the decision a decision can be reviewed. Passing the complaint to another body should be an option of last resort when other venues of a simpler review internally – perhaps by another investigation have been exhausted .

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

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?

- Changing the language of the Code to be more gender inclusive is **supported**
- Changes to clarifying the complaints process by simply having on the HDC web site something to the effect of a question " Have you discussed your concerns with he service provider? Also offer and advocate or mediator so that consumers feel supported in the process and not left to face a provide by themselves. This point also linked to the proposed strengthening of advocacy services which is **supported**

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

It has now been almost 30 years since the initial legalisation and development of the Code in response to issues uncovered at National Women's Greenlane Hospital. This timeframe is historic to many current practitioners (who may not have even been born at the time) and is for many is history that they are unaware of. This lack of knowledge is further compounded by rapid increase in internationally qualified health practitioners in Aotearoa. who have little knowledge or understanding of the underpinning principles of the Code. An education package should accompany the revised code and Act to engage with health professionals. Greater emphasis should be required in the preparation of health practitioners educated in Aotearoa and those who wish to gain registration to work here.

"Whistle blower" provisions should be clearly articulated for health professionals who are in clinical situations where poor care and breaches of the Code are observed – for example poor or absent processes of informed consent and clarity on rights for patients in teaching and learning. The current processes of the HDC do not effectively manage this rare but very difficult situation for practitioners.

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

With the significant and rapid growth in technologies including Artificial Intelligence (AI) and the utilisation of telehealth – there must be consideration that some telehealth support may be provided remotely including offshore. If services are people provided to the people of Aotearoa, can the Act, Code and complaints process reach those individuals who have provided care in this context ?

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

Ensuring that the Act covers services provided to patient/ client in Aotearoa – irrespective of the country of origin of these services or the jurisdiction of the regulatory body if outside of Aotearoa. HDC needs internal operation efficiency improvements with clear processes for approving or rejecting appeal. If this is not clear and in place, there is a high probability of a continuous cycle of appeal, which will further delay the ability of the HDC to address the tsunami waves of complaint

Summary

In general, changes to update the legislation to better reflect commitment to Te Tiriti is **supported**

Changes that will streamline and simplify the process, making it timelier in resolution are **supported**

Alternative processes that aim to have effective complaint resolution without a full HDC investigation are **supported** Thank you for the opportunity to comment .

Ngā mihi nui

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