

29 July 2024

Health and Disability Commissioner | Te Toihau Hauora, Hauātanga
PO Box 1791
Auckland, 1140

By email to: review@hdc.org.nz

Tēnā koe

Re: Review of the Health and Disability Commissioner Act and Code of Rights

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) welcomes the opportunity to provide input the Review of the Health and Disability Commissioner Act 1994 (the Act) and the Code of Health and Disability Services Consumers' Rights (the Code).

The RANZCP is the principal organisation for the medical specialty of psychiatry in Aotearoa New Zealand and Australia, responsible for training, educating, and representing psychiatrists on policy issues. The RANZCP has over 8400 members, including more than 5900 qualified psychiatrists, and is guided on policy matters by a range of expert committees including Tu Te Akaaka Roa, the New Zealand National Committee.

It is the RANZCP's vision to improve the mental health of communities through high quality psychiatric care, education, leadership, and advocacy. To realise this vision, the RANZCP seeks to cultivate and maintain the highest ethical standards and provide safe and appropriate care, in line with the Act and Code of Rights. Tu Te Akaaka Roa appreciates the role of the Health and Disability Commissioner (HDC) in upholding the rights of tāngata whai ora, and we tautoko the focus on tāngata whenua and tāngata whaikaha as part of this review. However, we recommend that further consideration is given to the psychological wellbeing of whai ora and clinicians and safeguarding the therapeutic relationship. Specifically, we recommend:

- The provision of resources and protection of health professionals
- Investment in alternative resolution pathways
- Retaining the current appeal process

Safety and Wellbeing of the Providers

Tu Te Akaaka Roa believes that every New Zealander has the right to access high quality care and supports robust and transparent quality improvement processes. However, we are aware that this right is breached at increasing rates due to the severe underfunding of Aotearoa New Zealand's health care system, and ongoing health workforce shortages. As noted in the HDC's annual report, a large proportion of complaints to the HDC relate to a 'lack of access to services', 'inadequate/inappropriate treatment' and 'waiting list/prioritisation issue', directly attributable to inadequate health care funding. However, the lack of resources

has wider implications. Vacancy rates across the mental health sector have more than doubled between 2018 and 2022 and it has been estimated that around one third of the psychiatry workforce in Aotearoa New Zealand is experiencing burnout. [1-3] As a result, clinicians are often unable to provide optimal care which can cause them significant distress, sometimes referred to as a 'moral injury'. [2] While we understand that resource constraints are taken into consideration during an investigation of a complaint, and treatment providers are not held personally responsible, the process itself can cause long-term harm to clinicians' psychological wellbeing, and impact their practice, as well as the relationship between the treatment provider and whānau whai ora. [4-7] We therefore urge the HDC to provide protections and support to health practitioners as part of the review process, particularly in situations where resource constraints are a factor.

Alternative Resolution Pathways

We welcome the introduction of alternative resolution pathways, including hui ā-whānau and hohou te rongo. As outlined in [Position Statement 84: Acknowledging and learning from past mental health practices](#), the RANZCP encourages open and constructive discussion of mental health practices that may have had harmful consequences. Open disclosure and restorative practices following adverse medical events have been shown to improve treatment relationships, provider engagement, as well as overall health outcomes for tāngata whai ora and whānau. [8-10] We recommend that culturally safe alternative resolution pathways are prioritised to provide whānau whai ora with a chance to be heard, encourage learning, and support the wellbeing of whai ora and treatment providers.

Appeal Process

Tu Te Akaaka Roa raises concerns about the proposed changes to the appeal process. While we agree that clinicians as well as whai ora should have the right to appeal a decision, it is important to reach a resolution in a timely manner. With the current processes in place, complaint investigations can take more than two years to complete, leaving health professionals and whai ora in a place of uncertainty. We believe that lowering the threshold for a Human Rights Review Tribunal would not only create further resource constraints, but also increase the risk of psychological harm to providers and whānau whai ora, due to extended timeframes and public hearings. We recommend that the limited resources are instead utilised to address timelines, provide guidance for professional(s) under investigation, and develop alternative resolution pathways to enhance practitioner engagement and improve the outcomes for all parties.

Thank you for the opportunity to provide feedback; we look forward to working with the HDC in the future. If you have any further questions regarding this letter, please contact the New Zealand National Office - Tu Te Akaaka Roa via nzoffice@ranzcp.org or on +64 (0)4 472 7247.

Ngā manaakitanga



Dr Hiran Thabrew
National Chair, Tu Te Akaaka Roa

References

1. Chambers CN, Frampton CM. Burnout, stress and intentions to leave work in New Zealand psychiatrists; a mixed methods cross sectional study. *BMC psychiatry*. 2022;22(1):380.
2. Every-Palmer S, Grant ML, Thabrew H, Hansby O, Lawrence M, Jenkins M, et al. Not heading in the right direction: Five hundred psychiatrists' views on resourcing, demand, and workforce across New Zealand mental health services. *Australian & New Zealand Journal of Psychiatry*. 2023;58(1):82-91.
3. ASMS. Anatomy of a Health Crisis. 2024.
4. Cunningham W. The immediate and long-term impact on New Zealand doctors who receive patient complaints. *N Z Med J*. 2004;117(1198):U972.
5. Wilkinson J, Marshall C. Health practitioner experience of Health and Disability Commissioner investigations. *Journal of Primary Health Care*. 2021;13(3):213-21.
6. Cunningham W, Dovey S. The effect on medical practice of disciplinary complaints: potentially negative for patient care. *N Z Med J*. 2000;113(1121):464-7.
7. Cunningham W, Dovey S. Defensive changes in medical practice and the complaints process: a qualitative study of New Zealand doctors. *N Z Med J*. 2006;119(1244):U2283.
8. Travaline JM, Ruchinskas R, D'Alonzo Jr GE. Patient-physician communication: why and how. *Journal of Osteopathic Medicine*. 2005;105(1):13-8.
9. Prentice JC, Bell SK, Thomas EJ, Schneider EC, Weingart SN, Weissman JS, et al. Association of open communication and the emotional and behavioural impact of medical error on patients and families: state-wide cross-sectional survey. *BMJ Qual Saf*. 2020;29(11):883-94.
10. Wailling J, Wilkinson J, Marshall C. Healing after harm: An evaluation of a restorative approach for addressing harm from surgical mesh. *Kia ora te tangata: He arotakenga i te whakahaumanu*. 2020.