



ANZCA
FPM

July 15, 2024

Health and Disability Commissioner Te Toihau Hauora, Hauātanga
e mail: review@hdc.org.nz

Dear Mrs McDowell,

Submission 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).

The Australian and New Zealand College of Anaesthetists / Faculty of Pain Medicine (ANZCA) is committed to setting the highest standards of clinical practice in the fields of anaesthesia, perioperative medicine and pain medicine. As one of the largest medical colleges in Australasia, ANZCA is responsible for the postgraduate training programs of anaesthetists and specialist pain medicine physicians, in addition to promoting best practice and ongoing continuous improvement that contributes to a high-quality health system.

The New Zealand Committee of the college would like to commend you on the consultative approach taken in the timely review of the Act and the Code. As the questions in the consultation document are squarely framed as predominantly seeking the views of consumers, we would like to provide our own feedback on the proposed review as doctors.

HDC and the ACC no-fault compensation for medical injury (and the absence of a culture of adversarial, compensation-driven, and highly costly legal court-based system) serve consumers, taxpayers and the New Zealand health service well.

We agree that 30 years since the Act came into law, and where health and disability services are increasingly under pressure, review is appropriate. We also agree that the Act and the Code should be updated to respond to changing service models and reflect modern expectations of complaint resolution, including faster, fairer processes to move towards more people-centred approaches. In seeking to update the Act and the Code to respond to the needs of all New Zealanders, particularly Māori and tāngata Whaikaha, the Commission is in step with a greater equity focus for health in Aotearoa for both tāngata whenua and tāngata whaikaha.

Both medical practice (including a new emphasis on cultural safety and reflection on the power dynamics inherent in seeking health care) and public expectations, including the rise of social media and a more general “rights based” culture, have changed greatly in the intervening years. As clinicians, ANZCA feel that there are sometimes fundamental issues with the application of hard legal frameworks to judge clinician performance.

We observe that HDC has the benefit of both hindsight and ample time to review and reflect on complex events rather than having to react in the moment. We advocate against the detrimental effects of having investigations held over clinicians for several years, and that the double or treble impacts of inquiries by employers, HDC and the MCNZ can be devastating. Decisions released years after the events benefit no-one: patient and whanau nor health systems and staff. Roles of doctors as expert witnesses, and the conflicts of interest that can arise are not part of the current review but are worth exploring.

We recognise that outside the blatantly negligent or illegal actions by individual doctors, HDC frequently recognises the systemic impacts of suboptimal clinical and working conditions, does implicate systemic issues as well as actions of doctors as individuals, and does look at culture, leadership, and the overall impact of these on provider performance. While understanding the imperative of putting patients at the centre of the service and decision making, we feel more perspective is necessary in the HDC communications with the public about the number and seriousness of complaints versus the number and effectiveness of the services provided.

ANZCA would like to see more of an emphasis placed on the role of HDC in promoting overall improvements of health systems, rather than the legal focus on “rights”. There are fundamental differences between law and medicine - in so many ways. A (medical) whole of system / MDT / team approach contrasts with a (legal) mainly individual approach based on case law and precedence.

An unintended consequence of drawn out, sometimes adversarial effect of HDC investigations is that mere fear of complaints and HDC review risks changing medicine to an unnecessarily high-cost low-value defensive approach. Examples of this include excessive investigations, surgeons not accepting higher risk patients) leading to an unacceptable reduction in options for some patients viewed as having the potential for treatment complications and a poor outcome: and more

complaints related to refusal of care requests. This is detrimental to the overall quality, efficiency and equity of the healthcare system.

In response to *specific* aspects of the proposals:

- ANZCA agree that the requirement for written consent for sedation that is equivalent to anaesthetic is an important technical improvement.
- ANZCA welcomes the increased accessibility initiatives for Māori and disabled people.
- We note, that “tikanga” and “te Ao Māori” mean very different things to different Māori consumers. Assumptions about preferences and use of te Reo for example are dangerous.
- It is difficult to see how the proposals will speed up the processes without more fundamental changes – and resources.
- Advocacy services (both within providers and external to providers) could have a greater role but must be trusted by patients and not seen as being agents for the providers.
- Options for right of appeal: will this be for patients/whanau only, or also for clinicians? Adding further processes to decisions or outcomes will cause additional delays and distress. Any appeal mechanism should also aim to shorten the process by making the process of challenging decisions a formal one with a finite number of steps and definite endpoint.

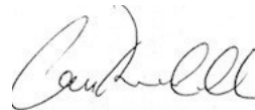
ANZCA is committed to best practice and ongoing continuous improvement and looks forward to continuing a constructive relationship with HDC, including being a potential provider of expert witnesses from outside New Zealand when required (countering perceived conflicts of interest due to prior collegial relationships in a small community of practice).

Nāku noa, nā



Dr Graham Roper, FANZCA

Chair, New Zealand National Committee
Australian and New Zealand College of Anaesthetists



Dr Chris Rumball

Chair, New Zealand Committee
Faculty of Pain Medicine