

31 July 2024

Health and Disability Commissioner

PO Box 1791

Auckland 1140

via email

Tēnā koutou,

Auckland Disability Law Submission on Review of the Health and Disability Commissioner Act 1994 and the Code of Health and Disability Services Consumers' Rights

Introduction

- 1) Auckland Disability Law ("ADL") is a community law centre. We are the only community law centre in Aotearoa New Zealand which solely provides legal services and activities to Deaf and disabled people around their disability related legal issues.
- 2) In principle, ADL supports the Health and Disability Commissioner's ("HDC") intent to make sure the Health and Disability Commissioner Act 1994 ("the Act") and the Code of Health and Disability Services Consumers' Rights ("the Code") works better for tāngata whaikaha | disabled people to reflect modern understandings of disability rights by:
 - Strengthening disability functions within the Act;
 - Updating definitions relating to disability;
 - Strengthening references to accessibility and;
 - Strengthening and clarifying the right to support to make decisions

Topic 1: Supporting better and equitable complaint resolution

- 3) ADL submits that the current process that must be followed in order to have a complaint about a breach of the Code accepted, investigated, referred to the Director of Proceedings ("DP") and advanced to the Human Rights Review Tribunal ("HRRT") is not satisfactory. The process takes too long.
- 4) Too few breaches of the Code are referred to the DP and it is only via the DP that a breach of the Code can be progressed to the HRRT. Most breaches of the Code are anonymised and uploaded to the HDC website for educational purposes.
- 5) Healthcare Consumers are unable to learn which HealthCare Providers have breached the Code. The infrastructure appears to be overly protective of the Healthcare Provider and not to recognise the need and the right of the Healthcare Consumer to timely and satisfactory justice.
- 6) ADL represents the Healthcare Consumer who, because of their disability is more likely to be a Healthcare Consumer.
- 7) ADL is also concerned that the independent Advocacy Service has reduced the number of their advocates recently and that they don't appear to have enough advocates for the whole of NZ.

Topic 2: Making the Act and the Code effective for, and responsive to, the needs of Māori

- 8) ADL also agree that the Code and Act need to be more effective for and responsive to the needs of Māori to improve the experiences and outcomes of Māori in the health and disability system.
- 9) ADL believe HDC should consider making trilingual interpreters more accessible and available. For example, more NZSL interpreters that also speak Māori.

Topic 3: Making the Act and the Code work better for tāngata whaikaha | disabled people

Did HDC cover the main issues about making the Act and the Code work better for tāngata whaikaha | disabled people?

- 10) ADL agree that the language relating to disability should reflect modern concepts of disability recognising that ‘disability is something that happens when people with impairments face barriers in society; it is society that disables us, not our impairments’. ¹
- 11) ADL agree that references to accessibility should be strengthened. Specifically, the word accessible should be included in Right 5(1). For example, it should read “Every consumer has the right to effective and accessible communication in a form, language, and manner that enables the consumer to understand the information provided”.
- 12) Furthermore, Right 10, should state “Every consumer has the right to complain about a provider in any accessible form appropriate to that the consumer”.
- 13) ADL also agree that the words ‘reasonably practical’ need to be removed from Right 5(1), where it is stated that “Where necessary and reasonably practical this includes the right to a competent interpreter”.
- 14) ADL also accepts that the language in the code needs to be strengthened and the right to support to make decisions should be clarified. We agree that Right 5 (Effective Communication) in the Code should be changed to explicitly reference the right for people to have support to understand information. Right 5 should state “Where necessary, this includes the right to appropriate supports and/or support people, including a competent interpreter”.
- 15) ADL agree with all the proposed changes HDC wish to make to Right 7 to strengthen and clarify the right to support to make decisions.

¹ Ministry of Social Development, New Zealand Disability Strategy 2016–2026. Wellington: Ministry of Social Development; 2016, pg 12.

What does ADL think of HDC's suggestions for making the Act and the Code work better for tāngata whaikaha | disabled people, and what impacts could they have?

- 16) We agree with all of them, subject to not having the necessary information to comment regarding the health and disability research section, as we have not seen this in our work with clients.
- 17) These suggestions will impact Deaf and disabled people positively and bring them in line with both the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD") and with modern concepts.
- 18) ADL believe that HDC need to go further in making rights to accessible formats and services more explicit. ADL believes that providers need to be made explicitly aware of their obligations. We see a lot of complaints by people that they are not getting accessible services and being informed of their rights.

What other changes should we consider (legislative and non-legislative) for making the Act and the Code work better for tāngata whaikaha | disabled people?

- 19) ADL is concerned about the low numbers of NZSL-English interpreters.
- 20) The purpose of the New Zealand Sign Language Act 2006 is to provide for the use of NZSL in legal proceedings. It is essential to note that this does not go far enough. There are often interpreters not provided as of right. For example, in court the internet may be substandard, so it is difficult to use an online interpreter. Another example of this can include if someone from the Sign Language community is at a doctor's surgery they may not have an interpreter. If there was a role of on-call interpreters that were available both over the internet or in person then this provides equitable access for the Sign Language community. There is the need for a more specialised service for providing NZSL interpreters in emergencies just like providing interpreters for other languages.
- 21) ADL also believe that there should be an additional section under Code (4) saying 'Every consumer has the right to accessible services'. This would also strengthen accessibility within the code.
- 22) ADL believe that HDC should do more proactive advertising and communicating of the code and the Act to provider organisations. i.e. Encouraging provider organisations to align their policies with it.

- 23) ADL submit that HDC need to look at the Code and Act and see how they can be strengthened to make them enough of a deterrent for providers to ensure they set up appropriate processes right from the start to comply with them.
- 24) The Health and Disability Commissioner Act doesn't appear to have been created in NZSL or other formats. People have a right to the being provided with Parliamentary acts in Accessible formats. Although the Code is incorporated into the accessible formats under the heading 'Your rights when using Health and Disability services' there should also be accessible versions of the Code itself.

Topic 4: Considering options for a right to appeal HDC decisions

ADL agrees with HDC's suggestions of introducing statutory requirements for review of HDC decisions and lowering the threshold for access to the HRRT. Currently it is too easy for Healthcare Providers to act negligently with not enough consequences.