

30 January 2014

Anthony Hill
Health and Disability Commissioner
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Manners Street
WELLINGTON 6142

By email: hdc@hdc.org.nz

Review of the HDC Act and Code

Dear Anthony

The New Zealand Medical Association (NZMA) welcomes the current review of the Health and Disability Commissioner Act 1994 and the Code of Health and Disability Consumers' Rights which you are undertaking. We note that the current review is the fourth such review undertaken by the Commissioner since 1994. Our association appreciates the opportunity to provide feedback on the current review.

The NZMA is the country's largest voluntary pan-professional medical organisation with approximately 5,000 members. Our members come from all disciplines within the medical profession and include general practitioners, doctors-in-training, specialists, and medical students. The NZMA aims to provide leadership of the medical profession, and promote professional unity and values, and the health of New Zealanders. Our submission has been informed by consultations with our General Practice Advisory Council, Specialist Advisory Council, and our Board.

Our feedback on the review is of a relatively minor nature and is limited to three main areas. The first area relates to the operation of the Act and Code in general. There are some concerns that the timeframes for investigations are not clearly conveyed and should be more clearly defined for all involved parties. Likewise, there is a view that there is scope for more effective and continued communication of proceedings relating to an investigation to all relevant parties.

We note that while timeframes for investigations are not specified in the legislation, targets for complaints resolution are set and reported on in the Annual Report. In the Annual Report for the year ended 30 June 2013, targets for complaints resolution are 80%, 95% and 99% for closures

within 6 months, 12 months and 2 years, respectively, and the actual proportion achieving resolution were 74.7%, 91.5% and 97.4% at these time points. While these figures suggest that investigations are in fact occurring in a timely manner, it is not clear whether they include the time taken to advise persons of the results of the investigation. It is also not entirely obvious as to whether they include the time period from when a complaint is initially received to when the Commissioner decides to commence an investigation. We note that a satisfaction survey of complainants and providers found that just 63% of respondents agreed the process was timely.

The second area we wish to comment on relates to the following proposed amendment arising out of the 2009 review: *“To enable the Director of Proceedings to require any person to provide information relating to a matter under consideration, until a decision has been made to issue proceedings, subject to section 63 of the Act.”* The NZMA would be opposed to any amendments that enabled the Director of Proceedings to overrule the current protections afforded by Protected Quality Assurance Activities (such as audit). We would appreciate clarification on the implications of this proposed amendment in practice.

The final area we wish to comment on relates to Right 5 of the Code and the clause relating to the right to a competent interpreter. The current Right 5 on effective communication is the only right where the qualification *“Where necessary and reasonably practicable”* is included within the right as applied to the use of an interpreter. The whole code is already qualified by Section 3 on provider compliance which also refers to *“reasonable actions in the circumstances”*. It is felt that the absence of a qualified interpreter for a patient with limited English proficiency makes compliance with all the other rights very difficult. In particular, it is extremely difficult to comply with the right to informed consent without a professional interpreter, where the clinician has some assurance that the information they have provided and the opinions from the patient they have received have been accurately interpreted.

Since the inception of the Code, the availability of interpreters has changed dramatically. Language Line provides free telephone interpreters during business hours throughout the country and there is increasing interpreter provision in particular regions. For example, the three Auckland DHBs now have a fully funded primary care interpreting service. The level of diversity in the New Zealand population is increasing. The latest census documents that the number of Asian people in New Zealand has doubled since 2001 and the number of people born overseas has increased from 22.9% in 2006 to 25.2% now, with a third of those born in Asia.

Accordingly, we suggest that consideration be given to deleting the words *“and reasonably practicable”* from clause (1) under Right 5, such that the revised clause reads: *“Every consumer has the right to effective communication in a form, language, and manner that enables the consumer to understand the information provided. Where necessary, this includes the right to a competent interpreter.”* Further, we suggest the following addendum to clause (1) under Right 7: *“If the patient has limited English proficiency, this will usually require the use of a competent interpreter.”*

We hope our feedback has been helpful and we look forward to learning of any recommendations arising out of the review.

Yours sincerely



Dr Mark Peterson
NZMA Chair