



A-Z OF EMPLOYING

Health and Disability Commissioner Act

Our guide for Employers and Managers

**SUPPORTING,
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BUSINESS**

Business**Central** 

Health and Disability Commissioner Act

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Overview

The purpose of the Health and Disability Commissioner Act 1994 is to promote and protect the rights of health consumers and disability services consumers, and to facilitate the fair, simple, speedy and efficient resolution of complaints regarding infringements of those rights.

The Act does this by establishing a Health and Disability Commissioner, whose responsibilities include:

- ▶ Preparing and then subsequently reviewing a Code of Health and Disability Service Consumers' Rights;
- ▶ Promoting respect for, observance and awareness of health and disability services consumers rights and the means of enforcing those rights;
- ▶ Making public statements and publishing reports on matters affecting health and disability services consumers;
- ▶ Investigating any action that appears to breach the Code;
- ▶ Making recommendations in relation to the means by which complaints involving breaches of the Code might be resolved and further breaches avoided;
- ▶ Making suggestions to anybody in relation to any matter that concerns the need for, or desirability of, action by that person in the interest of the rights of health and disability services consumer.

The Code of Health and Disability Services Consumers' Rights is of great importance to all health care providers as it sets out a number of principles that govern the relationship between the provider and its consumers. These principles cover issues such as informed consent, privacy, communication and procedures for handling complaints. A copy of the Code can be found on the Health and Disability Commissioner's website at: www.hdc.org.nz

Who the Act Applies to

Section 3 of the Act defines a "health care provider" as:

- ▶ A person for the time being in charge of providing health care services within the meaning of the [Health and Disability Services \(Safety\) Act 2001](#), in compliance with that Act;
- ▶ A controlling authority of a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- ▶ The Children's Health Camp Board;
- ▶ A manager of a certified institution within the meaning of the Alcoholism and Drug Addiction Act 1966;
- ▶ Any registered health professional;
- ▶ Any person who provides ambulance services to the public;
- ▶ Any person employed by the School Dental Service to carry on the practice of dentistry; and
- ▶ Any other person who provides, or holds himself or herself or itself out as providing health services, to the public or to any section of the public, whether or not any charge is made for those services.

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Complaints

Who can make a complaint

Any person may complain orally or in writing to an advocate or to the Commissioner alleging that any action of a health care provider or a disability services provider is or appears to be in breach of the Code. If a complaint is made under this section to an advocate and the advocate is unable to resolve the complaint, the advocate must—

- (a) refer the complaint to the Commissioner; and
- (b) inform the parties concerned of that referral and the reasons

Alternatively the Commissioner can initiate a complaint on being advised of a matter. As soon as reasonably practicable after receiving a complaint, the Commissioner must make a preliminary assessment of the complaint to decide—

- (a) whether to take 1 or more of the following courses of action:
 - i. to refer the complaint to an agency or person
 - ii. to refer the complaint to an advocate;
 - iii. to call a conference of the parties concerned;
 - iv. to investigate the complaint himself or herself; or
 - v. whether to take no action on the complaint.

Procedure

On receiving a complaint the Commissioner may:

- ▶ Take no action; or
- ▶ Refer the complaint to another person or authority if he believes this is in the public interest or more appropriate; or
- ▶ Investigate the complaint.

The Commissioner's consideration to take no action may take into account any of the following matters:

- (a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made;
- (b) whether the subject matter of the complaint is trivial;
- (c) whether the complaint is frivolous or vexatious or is not made in good faith;
- (d) whether the person alleged to be aggrieved does not want any action taken or, as the case may be, continued;
- (e) whether there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, that it would be reasonable for the person alleged to be aggrieved to exercise.

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Mandatory reporting

Whenever the Commissioner has reason to believe that the practice of a health practitioner may pose a risk of harm to the public, the Commissioner must promptly notify the appropriate authority of that belief and the reasons for it.

Whenever the Commissioner has reason to believe that failures or inadequacies in the systems or practices of a health care provider or a disability services provider are harming or are likely to harm the health or safety of members of the public, the Commissioner must promptly notify the Director-General of Health of that belief and the reasons for it.

If, during or after an investigation, the Commissioner is of the opinion that there is evidence of a significant breach of duty or misconduct on the part of a health care provider or disability services provider or an officer or employee or member of a health care provider or disability services provider, the Commissioner must promptly refer the matter to the appropriate person or agency.

The investigation

An investigation by the Commissioner' is impartial, independent and follows the rules of natural justice. Before investigating, the Commissioner will notify the parties concerned, and advise the health care provider of the details of the complaint and give it an opportunity to respond. At the completion of its investigation the Commissioner will form an opinion as to whether the provider has breached the Code or not. The party against whom the opinion is made is then given the opportunity to make a written submission. Once the Commissioner has considered this submission, and any further expert evidence called for, it gives a final opinion. A simple investigation usually takes between six and nine months a more complex investigation can take up to 18 months to two years. This is to allow time for all involved to have their say and for all the relevant information to be obtained.

If, in the Commissioner's opinion, there was a breach of the Code, the Commissioner can make recommendations to:

- ▶ The health care provider;
- ▶ The health professional body;
- ▶ The Minister of Health;
- ▶ Or any other person the Commissioner sees fit.

The Commissioner can also make a complaint to any health professional body, and, refer the matter to the Director of Proceedings.

Resolutions

The most common recommendations for a provider who has not met their obligations under the Code are:

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- ▶ To apologise;
- ▶ To change the way he or she does things;
- ▶ Changes to organisational policies and practices to make it easier for individual practitioners to meet the Code of Rights requirements;
- ▶ The Commissioner can ask the Ministry of Health to take steps to improve a service if an investigation shows a problem or if new rules are needed to protect consumers;
- ▶ The Commissioner can also ask an independent prosecutor, the Director of Proceedings to decide whether the provider should be disciplined or taken to court. This step is only taken in a very small number of serious cases.

The Commissioner's opinion is final and cannot be appealed. However the Office of Ombudsmen and the High Court can review the way the complaint was investigated to ensure that everyone has been treated fairly.

Refer to the **A-Z Guide on Human Rights** for information about the Director of Proceedings.

Advocacy service

The Act provides for an Advocacy Service. This is an independent and free service. It provides advocates who are able to support consumers to make decisions, and take the appropriate actions based on those decisions, with the goal of resolving complaints. Advocates also provide consumers with information about their rights, about how to make a complaint, and about how to contact the Commissioner. Advocates act on the instructions of the consumer and support the consumer to resolve complaints between parties.

Offences under the Act

The Act provides for offences. It is an offence under the Act to:

- ▶ Obstruct, hinder or resist the Commissioner or any other person in the exercise of their powers under the Act without reasonable excuse;
- ▶ Refuse or fail to comply with any lawful requirement of the commissioner or any other person under the Act without reasonable excuse;
- ▶ Make a false or misleading statement or give false or misleading information to the Commissioner or any other person exercising powers under the Act;
- ▶ Represent oneself, either directly or indirectly, as holding any authority under the Act when that person does not hold that authority.

Any person who commits an offence under the Act is liable, on summary conviction, to a fine not exceeding \$3,000.

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Remember:

- ▶ Always call AdviceLine to check you have the latest guide (refer to the publication date below).
- ▶ Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- ▶ Use our AdviceLine employment advisors as a sounding board to test your views.
- ▶ Get one of our consultants to draft an agreement template that's tailor-made for your business.
- ▶ Visit our website www.businesscentral.org.nz regularly.
- ▶ Attend our member briefings to keep up to date with all changes.
- ▶ Send your staff to Business Central Learning courses and conferences designed for those who manage employees.

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