



Health and Disability Commissioner  
Te Toihau Hauora, Hauātanga

## Act and Code Review consultation questions | Ngā pātai matapakinga

This document contains all the questions we are asking as part of the Act and Code Review consultation. Aside from the required questions, you can answer as many or as few as you'd like. When completed, please either email it to [review@hdc.org.nz](mailto:review@hdc.org.nz) or post it to us at PO Box 1791, Auckland, 1140.

Please visit <https://review.hdc.org.nz> to answer these questions online.

### Your details (required)

It's important for us to know a bit about you so that we understand whose views are being represented in submissions. It helps us to make sure that any changes we recommend will work well for everyone and have an equitable impact.

1. What is your name? Sneha Pillai

2. What is your email address? sneha@nzaca.org.nz

3. Are you submitting as an individual, or on behalf of an organisation or group?

- I am submitting as an individual  
 I am submitting on behalf of an organisation or group

4. How did you hear about this consultation? (please select)

- HDC website     News media     Social media     Internet     Through my job  
 Word of mouth     Other (please specify below)

Please answer the following questions **if you are submitting as an individual**. If you are submitting on behalf of an organisation or group, please go to page 3.

Which of these services do you engage with the most? (Please select all that apply)



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- Health services       Disability services       Mental Health services       Addiction services  
 Aged Care Services       Kaupapa Māori services       Other services (please specify)

\_\_\_\_\_

**What is your gender?**

- Female       Male  
 Another gender (please specify) \_\_\_\_\_  
 I don't want to answer this question

**How old are you?**

- Under 15       15 - 17       18 - 24       25 - 34       35 - 49  
 50 - 64       65+       I don't want to answer this question

**What is your ethnicity? (Please choose all that apply)**

- NZ European       Māori       Samoan       Cook Island Māori  
 Tongan       Niuean       Chinese       Indian  
 I don't know my ethnicity       I don't want to state my ethnicity  
 Other/s (please state): \_\_\_\_\_

**Do you identify as having a disability?**

- Yes       No

**If you are submitting on behalf of an organisation or group:**

**What is the name of your organisation or group?**



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New Zealand Aged Care Association

**What type of organisation/group is it?**

- Consumer organisation/group (please specify below)
- Iwi/ Māori organisation/group (please specify below)
- Health and/or disability services provider (please specify below)
- Central Government
- Local Government
- University/Academic
- Other (please specify below )

Please feel free to provide any further detail: This submission is from the New Zealand Aged Care Association (NZACA), the peak industry body for the aged residential care (ARC) sector in New Zealand. We represent over 90 percent of the ARC bed supply in the country. Our members' services include four categories of care – rest home, hospital, dementia and psychogeriatric, as well as short-term care, such as respite.

Thirty-four percent of services are operated by publicly listed companies, and the remaining 66 percent are made up of religious institutions, charitable trusts, family-owned, not-for-profits, and privately owned facilities.

We provide leadership, policy, and advocate for a sustainable and thriving aged residential care sector where every person can access care where and when they need it.

We offer professional development, research, information, and publications to help our members make informed business decisions, improve capability (both business and clinical) and keep them up to date with sector developments.

The ACA welcomes the opportunity to make a submission to HDC. The submission draws inputs from our membership and also the ACA Nursing Leadership Group (NLG), comprised of nursing leaders from the ARC sector. The NLG assists the sector and contributes to the work of the Association with policy development, clinical advice, and guidance.



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## Share 'one big thing'

This survey contains structured questions that ask for your feedback on each chapter in our consultation document. If you would prefer to give us your feedback as a whole, by telling us 'one big thing' – you can do so below.

If this is all you want to provide by way of your submission, that's fine by us. We will consider all the submissions we receive.

### What is your 'one big thing'?

As a peak body for the aged residential care sector in the country, the Association has heard from its members that the HDC process often feels punitive and penalising for the aged residential care (ARC) facilities. ARC facilities are 'providers' under the HDC Code.

We understand that the HDC publishes anonymised copies of its investigation reports on the HDC website for educational purposes. However, many of our members find that the process of leaving the reports on the website, which contain the name of the facility, has become less educational and more penalising. This is further amplified when the reports stay on the website for several years, even after the providers have addressed the issues raised during the investigation and/or the facility has changed ownership. Providers find that the process does not allow for recognition of any such learnings or improvements they may have made post the investigation.

To this effect, the Association would like to recommend that the HDC introduce a process by which HDC can check if the providers have addressed all existing gaps either during the next planned surveillance or certification audit. The report could then either be removed from the website or a note at the top of the report introduced that articulates that the matters have been addressed to the satisfaction of the HDC.

If limited by resources and capacity, **the Association would recommend that the HDC introduce a process by which the report is taken off the website or a note incorporated into the beginning of the report within one year from when a facility has furnished their corrective actions and outcomes following the investigation.**

## Topic 1: Supporting better and equitable complaint resolution

1.1: Did we cover the main issues about **supporting better and equitable complaints resolution**?



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In our previous submission, the Association had recommended a process focussed on equitable access and a shift towards person- and whānau-centred care. The Association is pleased to see that these suggestions have been included in the review. From a consumer point of view, we believe that the review has summarised the key issues satisfactorily.

1.2: What do you think of our suggestions for **supporting better and equitable complaints resolution**, and what impacts could they have?

1. Amend the purpose statement of the ACT: The Association agrees that the purpose statement should be broadened. We suggest that the updated purpose statement reflect the role of the whānau apart from incorporating the concept of mana into the Code's purpose statement.
2. Clarify cultural responsiveness: A principle of the Pae Ora (Healthy Futures) Act 2022 is that the health sector should be equitable, which includes ensuring Māori and other population groups have a right to access to services in proportion to their health needs, to receive equitable levels of service and to achieve equitable health outcomes. It would be highly recommended to have the code aligned with Pae Ora by way of updating Right 1(3) in the code. **However, it is important to note that healthcare providers cannot implement these principles without recognition that insufficient government funding and current policy settings are major barriers to the provision of care, particularly for private providers in rural and low socio-economic regions.** The Association also recommends that the phrasing be updated to be inclusive of tangata whaikaha, people from the rainbow community, and people from diverse ethnic groups.
3. Clarify the role of whānau: The HQSC 'Code of expectations for health entities' engagement with consumers and whānau' has clarified the role of whānau in the planning, design, delivery and evaluation of health services. All ARC providers are bound by this Code of expectations. ARC providers are also required by the Ngā Paerewa Health and Disability Services Standard and the Age-Related Residential Care Services Agreement by Te Whatu Ora to include whānau in the delivery of health services to consumers. **The Association recommends that any updates to the Code must ensure that the standard to which healthcare providers are audited aligns with their responsibilities to consumers under the Act and the Code.**
4. Ensure gender-inclusive language: The Association agrees with this recommendation.
5. Changes to Right 10 to protect consumers against retaliation and to clarify provider complaint processes: ARC providers are audited comprehensively around admission information and the requirement to provide information on the complaints process. The Association, however, understands that consumers may be lacking a perceived sense of protection from retaliation or have the sufficient information about their right to complain. To this extent, **we recommend that communications around the right to complain be**



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**improved as a solution, instead of updating Right 10 itself.** The Association, representing over 90 percent of the bed supply in ARC in Aotearoa New Zealand, is also committed to improving communications on the same.

6. Strengthen the Advocacy Service: The Association has heard from its members that advocacy services are quite hard to access in rural and remote areas, which causes further delays in resolving complaints. **We recommend strengthening the capacity of the advocacy services to ensure equitable and speedy access, particularly in rural and remote areas. We also suggest consideration of reworking this provision to create a more solutions focused environment through the provision of a mediation service as opposed to an advocacy service. This better reflects that desire of all involved in care to have positive outcomes for both those receiving and those providing care.**

1.3: What other changes, both legislative and non-legislative, should we consider for **supporting better and equitable complaints resolution?**

The Aged Care Association is the peak body for the aged residential care (ARC) sector in the country. The Association advocates for its members, which represent over 90 percent of the bed supply in ARC in the country.

We understand that the HDC publishes anonymised copies of its investigation reports on the HDC website for educational purposes. However, many of our members find that the process of leaving the reports on the website, which contain the name of the facility, has become less educational and more penalising. This is further amplified when the reports stay on the website for several years, even after the providers have addressed the issues raised during the investigation and/or the facility has changed ownership. Providers find that the process does not allow for recognition of any such learnings or improvements they may have made post the investigation.

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

2.1: Did we cover the main issues about **making the Act and the Code more effective for, and responsive to, the needs of, Māori?**

2.2: What do you think about our suggestions for **making the Act and the Code more effective for, and responsive to, the needs of Māori**, and what impacts could they have?

2.3: What other changes, both legislative and non-legislative, should we consider for **making the Act and the Code more effective for, and responsive to, the needs of Māori?**

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

3.1: Did we cover the main issues about **making the Act and the Code work better for tāngata whaikaha | disabled people?**

The Associations supports the main issues identified in the review about making the Act and the Code work better for tāngata whaikaha.

3.2: What do you think of our suggestions for **making the Act and the Code work better for tāngata whaikaha | disabled people**, and what impacts could they have?

The Association agrees with the Review's recommendation to update the language on disability, and improve the standard of care for tāngata whaikaha in alignment with the Convention on the Rights of Persons with Disabilities.



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

#### **Topic 4: Considering options for a right of appeal of HDC decisions**

4.1: Did we cover the main issues about **considering options for a right of appeal of HDC decisions?**

Yes, the HDC has covered the core issues about considering options for a right of appeal of HDC decisions. The Association agrees with HDC's view that a decision affecting a person's rights or interests should have the scope to be reviewed or appealed, if necessary.

4.2: What do you think about our suggestions for **considering options for a right of appeal of HDC decisions**, and what impacts could they have?

Introduce a statutory requirement for review of HDC decisions: The Association agrees that a statutory requirement may bring in more credibility to the HDC investigation process. However, at this stage, it is not clear whether providers can appeal the decision as well. **The Association recommends that the right to appeal be extended to providers. The Association also recommends that strong parameters for appeal be put in place to ensure that complainants have a clear understanding of the grounds on which they could request an appeal.** The phrasing of these parameters could have a strong influence in limiting minor or irrelevant complaints which could unnecessarily delay the investigations or put additional resource constraints on HDC. In the absence of this, providers and complainants alike could keep this process open for years on end if they don't like the findings. The HDC must outline clear circumstances when a resident or provider may request an appeal on a decision. **The HDC must also provide clear reasons in writing for a request for appeal being declined, to uphold credibility and transparency in the process.**

Lower the threshold for access to the HRRT: **The Association recommends that the current thresholds be maintained, to prevent undue delays in the investigation process.**





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4.3: What other **options for a right of appeal of HDC decisions**, both legislative and non-legislative, should we consider?

### Topic 5: Minor and technical improvements

5.1: What do you think about the issues and suggestions for **minor and technical improvements**, and what impacts could they have?

Revise the requirements for reviews of the Act and the Code: The Association agrees that the timeframe for reviews be amended to every 10 years, with the option of earlier reviews when necessary.

Increase the maximum fine for an offence under the Act from \$3,000 to \$10,000: The Association agrees with this recommendation to bring the fine in line with comparable offences under the Health Practitioners Competence Assurance Act 2003.

Give the Director of Proceedings the power to require information: The Association supports an amendment to enable the Director of Proceedings to require any person to provide information, up until the Director decides to issue proceedings. However, we support appropriate setting of request to comply timeframes – our members can be asked to provide a lot of information regarding a complaint that can take some time to collate while they continue to care for their current/other residents.

Introduce a definition for 'aggrieved person': The Association agrees that the term 'aggrieved person' must be defined to acknowledge and recognise the role of the whānau in one's health and wellness journey.

Allow for substituted service: While the Association understands the rationale for this recommendation, **it recommends that 'reasonable attempts to advise' be defined clearly.** The Association would also recommend that in case the HDC is unable to contact the facility directly at the first instance, that the communication be attempted to be routed through the relevant Te Whatu Ora regional relationship team, HealthCERT or via the Association, which is the peak body for the aged residential care sector.



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Provide HDC with grounds to withhold information where appropriate: The Association supports the recommendation.

Expand the requirement for written consent for sedation that is equivalent to anaesthetic: The Association acknowledges the rationale behind the recommendation. **However, the Association strongly recommends that residents receiving end of life (EOL) symptom management should not be required to have written consent for sedation.** We have heard from our Nursing Leadership Group that gaining written consent for a combination of painkillers and sedatives would be difficult with an EOL resident. The General Practitioner (GP) or specialist would have already had a conversation with the resident and gained their consent for treatment. When a resident is admitted they sign a consent form for treatment.

Clarify that written consent is required when there is a significant risk of serious adverse effects: **The Association recommends that the phrase of 'adverse effects' be better defined to avoid confusion.** We have heard from our members that ARC facilities seek written consent for vaccinations etc., (where there is risk that a resident could suffer an adverse reaction) which would come under this section.

5.2: What other **minor and technical improvements**, both legislative and non-legislative, should we consider?

Consideration could be given to a more comprehensive triage process for complaints that require the complainant to raise the complaint with the provider in the first instance as a compulsory step unless they can provide evidence that there were solid reasons for them not having to meet this criterion. Many complaints could be solved much earlier if providers had been given the opportunity to address the matter in the first person. The complainant does not have to agree with the providers solutions and can always escalate the complaint but in the first instance and under the rules of natural justice we suggest this amendment to the process.

5.3: What are your main concerns about **advancing technology** in relation to the rights of people accessing health and disability services?



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It is hard to determine given how technological advancements can change quickly. However, technological advancement (robotic technology) is slower due to the high costs of uptake of AI, within the ARC sector. Our main concerns would be around ensuring high levels of protection and limited access to residents' information (personal files/documentation) to third-party technological organisations.

5.4: What changes, both legislative and non-legislative, should we consider to respond to **advancing technology**?

The Association has heard from its members that virtual nursing has seen an increase in uptake since COVID-19 and in facilities that are experiencing nursing shortages. **The Association would recommend having guidelines in place to ensure that facilities are adequately funded and resourced to ensure that virtual nursing is only used to support clinical care, and not replace it.** There needs to be human health professionals who hold professional accountability where AI is introduced and used.

### Publishing and data protection

This section provides important information about the release of your information. **Please read it carefully.**

You can find more information in the Privacy Policy at [hdc.org.nz](http://hdc.org.nz).

Being open about our evidence and insights is important to us. This means there are several ways that we may share the responses we receive through this consultation. These may include:

- **Publishing all, part or a summary of a response** (including the names of respondents and their organisations)
- Releasing information **when we are required to do so by law** (including under the Official Information Act 1982)

### Publishing permission

**May we publish your submission? (Required)**

- Yes, you may publish any part of my submission
- Yes, but please remove my name/my organisation/group's name
- No, you may not release my submission, unless required to do by law



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**Please note any parts of your submission you do not want published:**

### **Reasons to withhold parts of your submission**

HDC is subject to the Official Information Act 1982 (The OIA). This means that when responding to a request made under the OIA, we may be required to disclose information you have provided to us in this consultation.

**Please let us know if you think there are any reasons we should not release information you have provided**, including personal health information, and in particular:

- which part(s) you think should be withheld, and
- the reason(s) why you think it should be withheld.

We will use this information when preparing our responses to requests for copies of and information on responses to this document under the OIA.

**Please note:** When preparing OIA responses, we will consider any reasons you have provided here. However, **this does not guarantee that your submission will be withheld**. Valid reasons for withholding official information are specified in the Official Information Act.

Yes, I would like HDC to consider withholding parts of my submission from responses to OIA requests.

I think these parts of my submission should be withheld, for these reasons:



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### Follow up contact

**If needed, can we contact you to follow up for more detail on your submission? (required)**

Yes, you can contact me

No, do not contact me

### Further updates

Would you like to receive updates about the review?

I'd like to receive updates about the review

I'd like to receive updates from HDC about this and other mahi

### Thank you

We really appreciate you taking the time to share your thoughts with us. If you have provided your details, we'll keep you updated on progress. If not, feel free to check our consultation website <https://review.hdc.org.nz> for updates or to contact us if you have any questions. We can be reached at [review@hdc.org.nz](mailto:review@hdc.org.nz).