Health and Disability Commissioner
*Te Toihau Hauora, Hauātanga*

# Office of the Health and Disability Commissioner Te Toihau Hauora, Hauātanga

# Briefing to the Incoming Minister of Health

November 2017

# Part One: Strategic Issues

## HDC PLAYS A UNIQUE AND IMPORTANT ROLE IN THE HEALTH AND DISABILITY SECTOR

### HDC's Role

The Heath and Disability Commissioner (HDC) is the independent health sector watchdog for consumer rights. The HDC's primary responsibility is to promote and protect the rights of consumers of health and disability services by:

- resolving complaints;
- improving quality and safety within the sector;
- appropriately holding providers to account; and
- promoting the rights of consumers.

The rights of consumers (and corresponding duties of providers) are set out in the Code of Health and Disability Service Consumers' Rights (the Code). The Commissioner's jurisdiction is confined to quality of care; it does not extend to funding issues or service entitlement.

The establishment of the HDC was one of the principal recommendations from the Cartwright Inquiry into the "unfortunate experiment" and is a key mechanism for protecting consumers and ensuring a consumer-centred health and disability system. The HDC complaints system, and the resolution and accountability that follow, is also an integral dimension of New Zealand's no-fault treatment injury regime where medico-legal litigation is largely unavailable to consumers.

HDC has a statutory function to monitor and advocate for improvements to mental health and addiction services. The Mental Health Commissioner, under delegation from the Commissioner, is responsible for the performance of this function.

Further information about HDC is provided in Part 2 of this briefing.

### HDC's Impact in the Sector

HDC is a high profile organisation. Key investigations are widely reported and recommendations are acted on (in 2016/17 providers complied with 99.6% of recommendations made by HDC). HDC's role leads to significant improvements for consumers and for the wider New Zealand population. HDC uses evidence, guidance, education, training and its complaints data to help providers deliver better care.

HDC's role leads to change throughout the system – from individual providers, to sector-wide change, to the development of consumer-centric polices and practices. A key focus for us is resolving individual complaints and using the lessons from these to bring about systemic and sector-wide change.

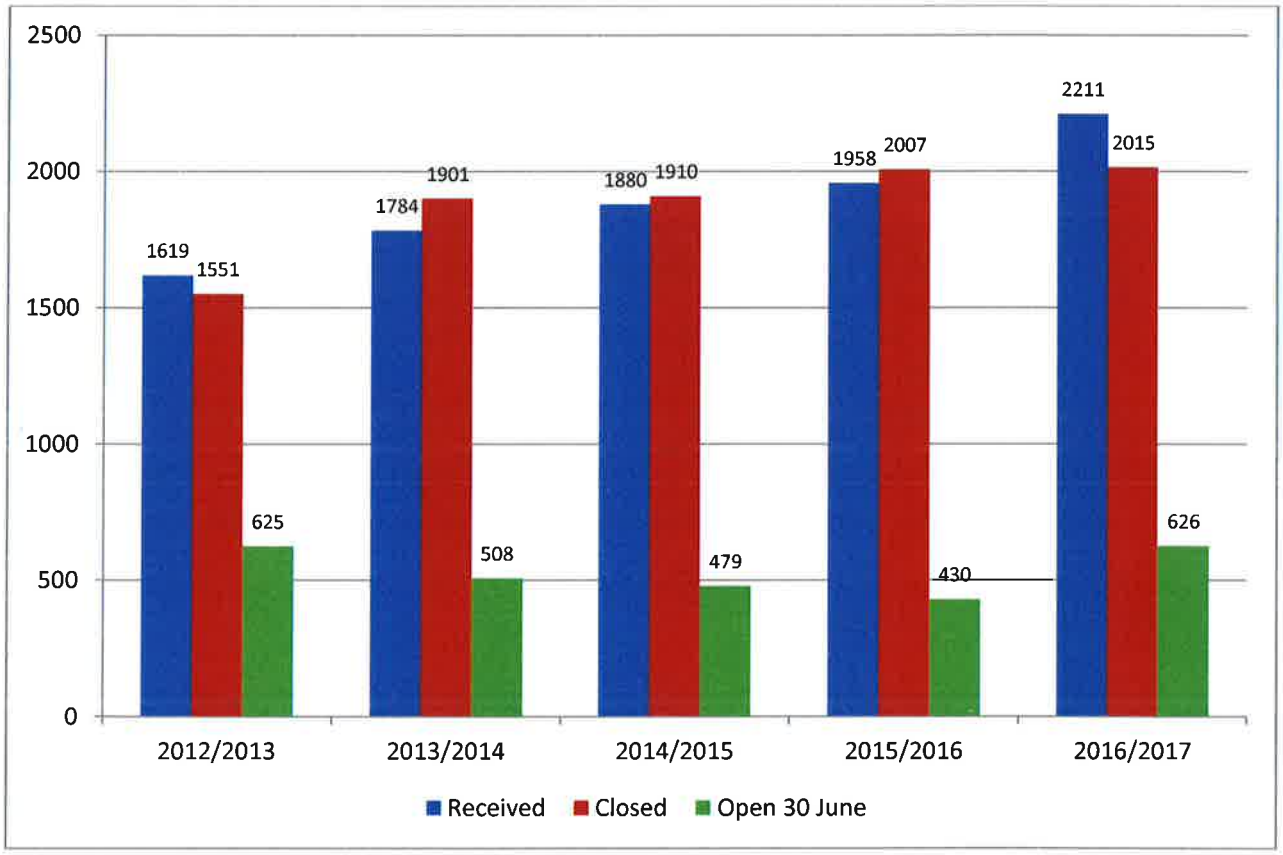
## WHAT WE ARE SEEING IN THE HEALTH AND DISABILITY SECTOR

New Zealand has a high functioning and well regarded health and disability sector of which we can be justifiably proud. A key challenge is to address areas where there is evidence of room for quality improvement and to move performance closer to HDC's vision of consumers at the centre of services.

As the watchdog, HDC has an important role to play in monitoring trends in complaints to target areas of concern with the sector. Based on the complaints that come to us, we are uniquely placed to see trends and issues in the sector and to be able to raise these with you, the Ministry, providers and other players in the sector.

Complaints to HDC have continued to rise steadily in recent years. We anticipated growth of 5-10% in 2017/18, although the first four months of the year has already seen a 31% increase compared to the same time last year. Our analysis shows that there is no obvious pattern in this increase, with complaints rising across all categories and provider types. Growth in complaints may be due to a number of factors including: the increasing public profile of HDC; the improved accessibility of complaints processes due to advancing technology; an increasing awareness among the public of their rights; and increasing health service activity.

**Figure 1.** Complaints received and closed from 1 July 2012 to 30 June 2017




Based on complaints, service areas we are currently focused on include:

- **Maternity/midwifery care:** A number of recent investigations about standards of care and informed consent have identified issues around midwives' adherence to guidelines about consultation with obstetric and related medical services (referral guidelines). HDC is currently engaging with the Midwifery Council on this issue. Other common issues include: fetal monitoring/interpretation; lack of situational awareness and failure to identify fetal distress; failure to escalate care to senior staff; and inadequate communication between Lead Maternity Carers and specialist care during transfers of care.

- **Aged care:** Common complaint issues include: recognition/management of deteriorating conditions; communication between providers; provision of dementia care; provision of end-of-life care by residential aged care facilities and falls management. Recent investigations have highlighted the challenges around providing care to younger disabled consumers with high and complex needs by residential aged care facilities.

- **Disability support services**: Complaints about community support services are rising. Issues include: support staff not turning up at prescribed times; difficulty contacting the support service; and the skill level of support staff. These issues are of particular concern for these vulnerable consumers who are reliant on the care provided to them by support staff. HDC is aware of issues with Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 services. Ensuring there is sufficient capacity and capability to meet ongoing demands of this vulnerable group of consumers is a priority. HDC is engaging with the Ministry of Health on the progress it is making to address these issues with DHBs and other key agencies.

- **Primary care**: Common issues include: delayed diagnosis; follow-up of test results (including delegation of test result follow-up between primary and secondary care and clarity of roles); referral management (including the importance of GPs advocating for the consumer in the secondary care system); use of locums and induction processes; and continuity of care for patients seeing multiple GPs.

- **Mental health:** Complaints about mental health services make up around 11% of all complaints received by HDC, and mental health services are the second most commonly complained about service type for DHBs. Common issues seen in complaints about mental health services include: inadequate risk assessments; inadequate discharge planning; inadequate service coordination (particularly between mental health services and addiction services and between inpatient services and community mental health services); inadequate communication with family, (particularly in regards to risk assessments and discharge planning); and adequacy of care and services available to consumers with co-existing conditions (particularly those with a co-existing addiction and mental health issues).

As well as trends in complaints in particular service areas, we are also monitoring a number of cross-cutting issues in the sector including:

- **Workplace culture and leadership**: Issues with workplace culture and leadership often play a part in services that we receive complaints about. Common issues include the impact of hierarchy on junior staff speaking up; accessibility/support of senior staff; supervision of junior doctors, enrolled nurses and health care assistants; relationships between clinicians and management; and tolerance and normalisation of sub-optimal practices.

- **Seamless service delivery**: Transitions of care can be particularly prone to error. Inadequate communication, coordination and integration happens at key transition points – for example within and between hospital teams (including between the Emergency Department and the rest of the hospital and vice versa); primary and secondary care; care between secondary and tertiary services (particularly in the rural context). Inadequate documentation available at transitions of care is another issue raised. A universal electronic patient record would significantly improve this issue.

- **Waiting list management and prioritisation**: Complaints regarding access to publically funded healthcare are increasing, with waiting list/prioritisation issues recently becoming one of the most prominent complaint issues for DHBs. Prioritisation schemes have become

vital to ensure that those patients at greatest clinical risk receive timely treatment within a finite resource. Our open investigations into waiting list management and prioritisation, although focused on specific service areas within individual DHBs, are likely to provide broader lessons for the sector.

In addition, HDC closely monitors each individual DHB's complaint profile through the publication of six-monthly DHB complaint trend reports to each DHB. We can provide further information about any DHBs of interest.

We would be happy to provide further detail about any of these trends and issues.

## MENTAL HEALTH AND ADDICTION SERVICES

Our statutory role to monitor and advocate in relation to mental health and addiction services, combined with our independence and the powers of the Commissioner to investigate, report, and suggest actions, put us in a unique position.

HDC's complaints resolution work, its sector engagement and its monitoring of sector performance information provides insights into consumer and family/whānau experiences and enables HDC to identify wider issues that need to be addressed. As part of our statutory monitoring role, we have developed a framework to monitor and report on these issues. This will result in a public Monitoring and Advocacy report with the first of these to be released in February 2018.

We welcome recent announcements signalling an increased emphasis on mental health and addiction issues. We look forward to contributing to the review of mental health services, and to providing input to plans to reinstate the Mental Health Commission. We will be writing to you about these issues in more detail shortly and would welcome the opportunity to discuss them with you.

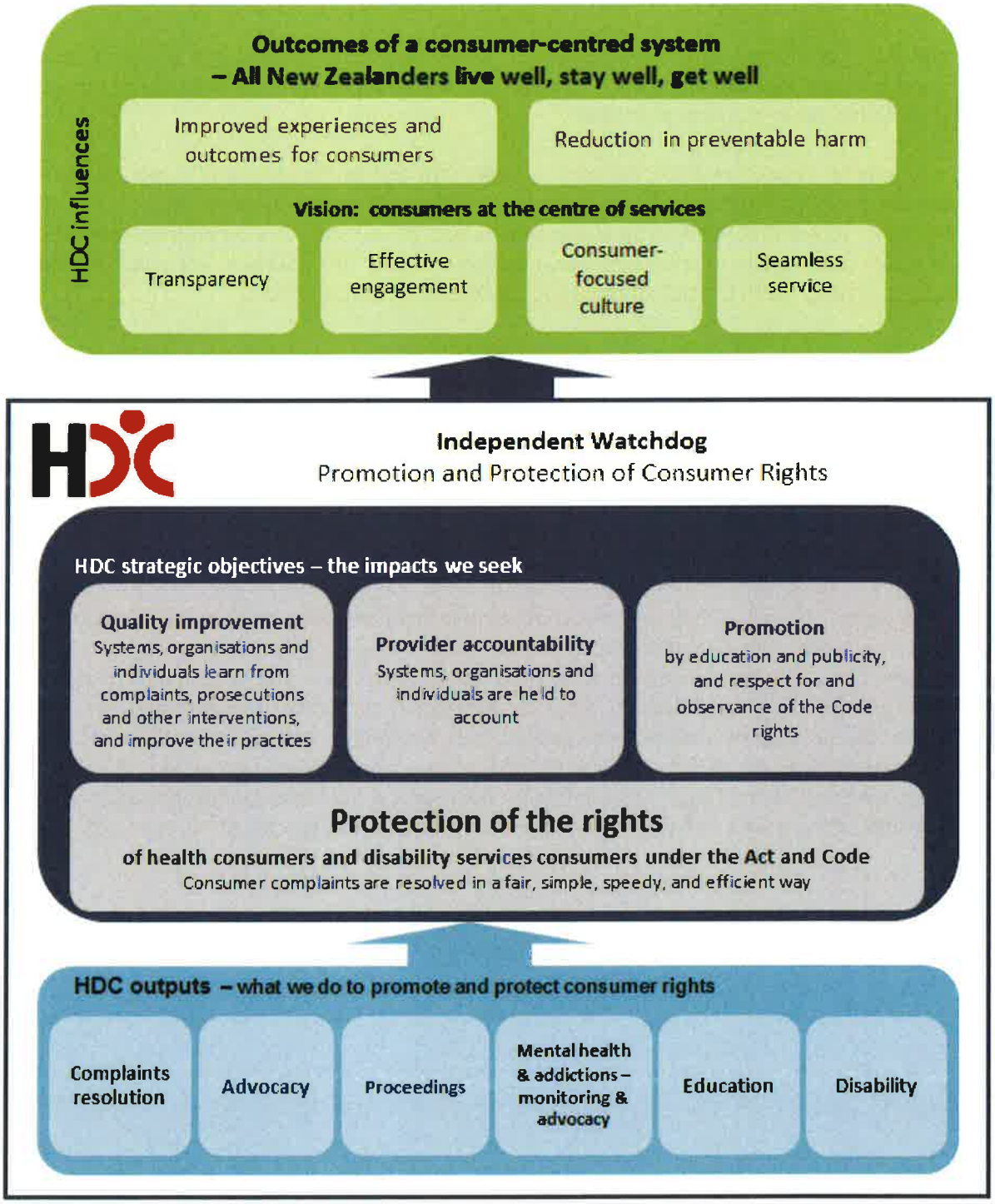
## CODE REVIEW AND RIGHT 7(4)

The Health and Disability Commissioner is responsible for carrying out reviews of the Code at least every five years. The last such review was completed in 2014 and the next review will be carried out by 2019. In addition, the Commissioner has undertaken a stand alone review of Right 7(4) of the Code, which deals with the circumstances in which an adult who is unable to give informed consent may be enrolled in health and disability research. We carried out public consultation earlier this year and are in the process of analysing the results. It is a complex task to strike the right balance between protecting some of our most vulnerable consumers and allowing valuable research to take place that will improve treatment and services for those groups. We are planning to report next year on the results of the review and this may include recommendations for changes to the Code.

## Part 2: About HDC

### HDC's Vision

HDC's vision is to see **consumers at the centre of services**. In a consumer-centred health and disability system, consumers are fully engaged in their care, families are listened to, providers work effectively and respectfully together at all levels, information is shared and services are provided seamlessly within and between services. In a consumer-centred system the rights under the Code are upheld. The principles that sit at the heart of the Code are also those that underlie the international safety and quality agenda. Informed consent is a foundation principle of the Code.



## HDC Strategic Priorities

HDC's strategic priorities for 2017–2021 are to:

- resolve complaints in a fair, timely and effective way while dealing with the constantly increasing volume and complexity of complaints;
- work with District Health Boards (DHBs), health providers, and disability services providers to improve their complaints processes so that complaints are resolved at the lowest possible appropriate level;
- monitor mental health and addiction services and advocate improvements to those services;
- continue to work with providers, the Health Quality & Safety Commission (HQSC) and other key stakeholders to effect the changes we recommend in response to complaints;
- operate a financially sustainable organisation with an appropriate resource level to manage volume and complexity; and
- strive for continuous improvement in the way we operate.

## HDC Functions

HDC's work is organised into six core functions:

1. **Complaints resolution.** Complaints resolution remains the central function for HDC and provides the platform for achieving our strategic objectives, receiving 2,211 complaints in 2016/17. HDC focuses on the fair and early resolution of complaints. Options for achieving resolution include referring the matter for advocacy support, referring the matter to the provider for resolution between provider and consumer, seeking expert advice, or referring to an appropriate regulatory body for further action or formal investigation. The Commissioner can also undertake investigations on his own initiative, without the receipt of a complaint.

2. **Advocacy.** HDC's Director of Advocacy currently contracts with the National Advocacy Trust to provide the independent Nationwide Health and Disability Advocacy Service (Advocacy Service). Advocacy is a highly successful mechanism for ensuring the fair, simple, speedy and efficient resolution of complaints. The Advocacy Service plays a crucial role in managing complaints that are suitable for resolution between the parties, with advocates located in community-based offices assisting consumers to work with providers to achieve resolution. Advocates also offer community-based education and training about consumer rights and provider duties to both consumers and providers of health and disability services. In 2016/17, there were over 2,800 new complaints to the Advocacy Service and over 10,000 public enquiries were dealt with.

3. **Proceedings.** Sometimes there are cases in which formal proceedings against a provider are necessary to promote and protect consumer rights. The Director of Proceedings, appointed under the Health and Disability Commissioner Act (1994), exercises independent statutory functions. Where the Commissioner has found a serious breach of a consumer's rights, the Commissioner may refer the provider to the Director of Proceedings. The Director then reviews the Commissioner's investigation file and makes an independent decision on whether to take proceedings.

4. **Monitoring and advocacy.** We have a statutory role to monitor and advocate for improvements to mental health and addiction services. This role is delegated to the Mental Health

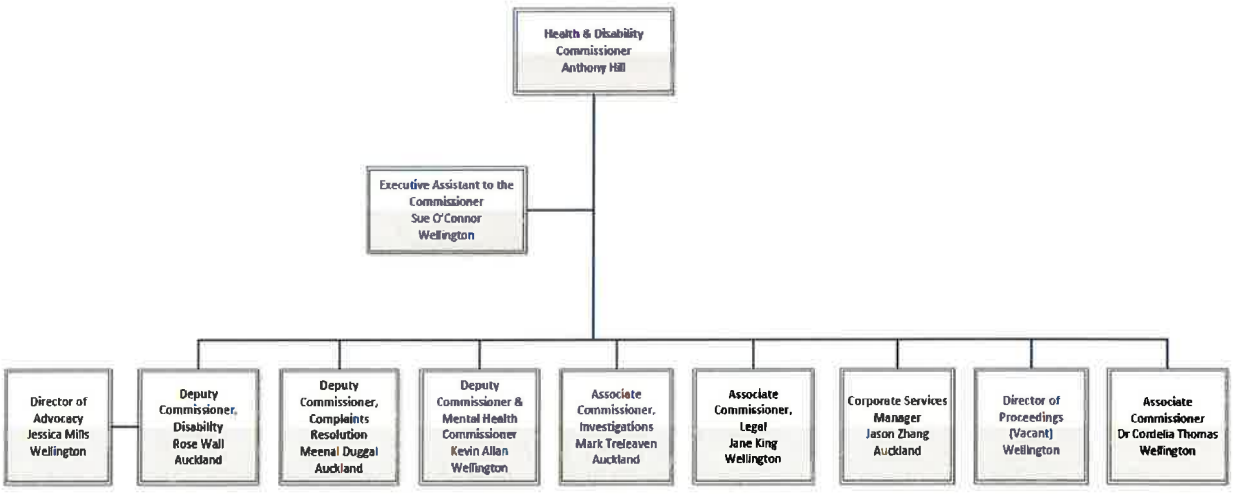
Commissioner. Service monitoring is based on analysing themes and trends from HDC complaints and assessing service performance information, and through sector engagement. Our advocacy work is informed by the results of that monitoring.

5. **Education.** We deliver a variety of education and training initiatives aimed at improving providers' and professionals' knowledge of their responsibilities, and consumers' knowledge of their rights. Education initiatives are delivered to groups at national and community levels, and directly to consumers and providers (through response to individual enquiries). Promoting lessons from complaint trends is also an important facet of our education function, and to this end we produce complaint trend reports in order to ensure that these lessons are reported back to the sector and to the general public in a way that supports quality improvement. Our education work is informed by the other activities, which may identify the need for education on specific consumer rights, and is also an outcome of those activities, particularly in relation to the specific providers engaged in those other processes.

6. **Disability.** The Deputy Health and Disability Commissioner (Disability) has a particular focus on promoting awareness of, respect for, and observance of the rights of disability consumers. This role is also responsible for HDC's contribution toward the implementation of the New Zealand Disability Strategy 2016-2026 and the United Nations Convention on the Rights of Persons with Disabilities.

## Structure and People

HDC is an Independent Crown Entity established under the Health and Disability Commissioner Act 1994. The Commissioner leads the organisation with the Executive Leadership Team of three Deputy Commissioners (one of whom is the Mental Health Commissioner), three Associate Commissioners, a Director of Proceedings, and a Corporate Services Manager. There is also a Director of Advocacy which is a statutory role. HDC does not have a separate Board or other governing body. HDC has around 77 FTEs, with an office in Auckland and one in Wellington.




## Funding

HDC is funded through Vote: Health under the Monitoring and Protecting Health and Disability Consumer Interests appropriation. In 2017/18, HDC will receive funding of $12,870,000 of which $3,487,781 is paid to the National Advocacy Trust.