

Making Complaints



A guide for mental health service users



Human Rights
Commission
Te Kāhui Tika Tangata

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A guide for mental health service users

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1. What is this guide about?

This guide can help you make a complaint about a service or treatment that you, a friend or family member have received for a mental health issue. It also explains what you can do if are not happy about the way you are dealt with because you experience mental health issues.

It outlines the complaints services available, the types of complaints they handle and how to contact them.



2. First steps

What do I do if I am not happy with a mental health service?

If you are not happy with the care you, a friend or family member have received in relation to a mental health issue, it may help to first:

- Talk the issue over with a support person or an advocate.
- Complain to the service provider.

If you are still not happy with how the service

provider has dealt with your complaint, you may be able to make a complaint to one of the organisations in this guide.

If you are receiving mental health services under the Mental Health (Compulsory Assessment and Treatment) Act (Mental Health Act), there are complaints procedures under the Act that may be useful. See section seven in this guide – complaints procedures under the Mental Health Act.

If you have a complaint that involves your personal safety, such as a sexual assault, you can complain to the police. If it is an emergency, call 111. Otherwise, contact your local police station. See the government listings in your telephone book or online at www.police.govt.nz.

How do I find a support person?

It can be useful to have a support person to help you complain. A friend, family or whanau member or an advocate can act as your support person.

Ask your support person what they think about your problem. They may be able to help you put your complaint in writing or attend meetings with you.

Advocates can help with specific problems. For more information, see section three on support, advocacy and advice services.

How do I complain to a mental health service provider?

If you have a complaint about the care, treatment or service you have received, you can complain directly to the service provider. Some of the complaints services listed in this guide require you to do this before seeking their help.

You can speak to the mental health worker concerned first. If they can not or will not help or you are uncomfortable going to them directly, you can complain to the person's manager.



You can take a support person with you to any meetings.

Every hospital, District Health Board (DHB) or mental health service provider has to have a formal complaints procedure. This requires them to take complaints seriously and respond in a set time.

You can ask for a copy of the complaints procedure. It will tell you how to make a complaint. Your mental health worker or support person can get a copy of the complaints procedure for you.

Complaints can be made in writing or verbally, but it is a good idea to keep a written record of when the complaint was made. Try to make your complaint as soon as possible after the situation you are complaining about.

If you feel your complaint to a mental health provider has not been properly dealt with, you can make a formal complaint to one (or more) of the complaints services listed in this guide.

How do I complain to a complaints service?

This guide describes the type of complaints dealt with by the different organisations and how you can complain. See section five on complaints services.

If you are not sure about who to contact, call a Health and Disability Advocate, as they will be able to clarify your rights and explain the options available to you. See section three on support, advocacy and advice services.

What is the best way to complain?

Here are some suggestions that may help you to sort out your complaint:

- Before contacting the service provider, note down the main points of your complaint and what you want done to resolve it.

- Some services require you to make your complaint in writing. An advocate or support person can help you with this.
- If you make a verbal complaint, follow it up with a letter or email as soon as possible. This way there is documented evidence of your complaint.

When putting your complaint in writing:

- Head your letter "Complaint".
- Write clearly and simply, sticking to the facts. You can ask for help from a support person.
- Set out the letter logically and include your name and contact details, relevant dates and times, and a description of what happened.
- If describing events, try to list them in the order they happened.
- Attach copies of any relevant documents.
- Tell the service provider what you want to get out of the complaint. This can be an apology, an explanation of what happened or some other action to put the matter right. It is good to ask for something that is realistic – this will give the service provider a greater chance of sorting out your complaint.

More tips:

- If the problem is ongoing, it helps to keep a record of what happens, such as meetings, telephone calls, letters.
- Keep track of complaints or other actions you have taken, including the date, how long it took for someone to respond and what they said.
- Keep copies of any letters you send, including emails.
- If you speak to someone on the telephone, or in person, keep a record of the date, time, the person's name, and what was said.

- Although it may be difficult, try and remain calm and polite when dealing with anyone who is handling your complaint.

3. Support, advocacy and advice services

Who can help me make a complaint?

In addition to friends and family, there are specially trained people whose role is to help you deal with any problems you may have with mental health services.

If you are thinking about making a complaint about care and treatment you have received, it can help to contact one of the following:

- a Health and Disability Advocate
- a Consumer Advisor
- a mental health support group, such as a local peer support group.

What is a Health and Disability Advocate?

Health and disability advocates are based in local communities and can help sort out your complaint.

An advocate will:

- listen to your complaint
- give you information about your rights
- help you identify and clarify issues
- help you to explore the possible options to resolve each issue
- support you in the actions you take to resolve your issue.

The Health and Disability Advocate service is free and confidential. It is independent of health and disability service providers, such as hospitals and government agencies.

Contact a Health and Disability Advocate

Free phone: 0800 555 050

Free fax: 0800 2 SUPPORT (0800 2787 7678)

Email: advocacy@hdc.org.nz

Website: www.hdc.org.nz

What is a Consumer Advisor?

Consumer Advisors are employed by DHBs to provide a consumer perspective on the delivery of mental health services. They are people with personal experience of mental illness who advise clinical and management staff on issues affecting consumers (mental health service users).

Consumer Advisors act as a link between mental health services, consumers and the wider community. They do not formally handle complaints from mental health users or act as an advocate, but they can pass on consumer feedback to management.

If you have a complaint, a Consumer Advisor can refer you to a peer advocate at the Health and Disability Advocacy Service (see previous page).

Contact a Consumer Advisor

Your mental health service provider can provide contact details for Consumer Advisors. These details are also available on each service provider's website.

How can a consumer support organisation help?

The people who run consumer support organisations have personal experience of mental illness. They may be able to help you with your complaint.

Your DHB will be able to tell you whether there is a consumer support organisation in your area. Or call your local Citizens Advice Bureau (CAB) for information. Check your telephone book or online.



4. Legal representation

Do I need a lawyer?

The complaints services listed in this guide are low-cost, quick and relatively informal. Advocates are available to help you complain and it is unlikely you will need a lawyer.

Making a complaint to a court or tribunal, such as the Mental Health Review Tribunal, is more formal. While these hearings are as informal as possible, most people are represented by lawyers.

Where do I get legal advice?

You can get legal advice from:

- lawyers
- Community Law Centres
- CABs.

Lawyers

If you are being treated under the Mental Health

Act, a District Inspector can help you contact a lawyer (see page 15). Anyone who is detained has the right to a lawyer, e.g. at the police cells or when an application for your assessment has been made under the Mental Health Act.

The New Zealand Law Society, your local community law centre or the CAB can help you find a lawyer. Check your telephone book or online for your nearest branch.

Community Law Centres

If you need legal advice or representation, Community Law Centres (CLCs) may be able to help. There are 25 centres in New Zealand. They offer free legal advice and some may provide a lawyer to represent you if you need one.

To contact your local CLC, see the white pages of your telephone book or visit their website: www.communitylaw.org.nz.

Citizens Advice Bureaux

CABs are non-profit organisations that provide free advice and information on a range of issues. Many run regular clinics where you can talk to a lawyer for free.

See the white pages of your telephone book or visit their website:
www.cab.org.nz.

What if I need a lawyer but can't afford one?

If you need a lawyer but can't afford one, you may be able to get legal aid.

To find out whether you can get legal aid, contact the Legal Services Agency. The Legal Services Agency is responsible for helping people access justice. You do not have to be a New Zealand citizen or be living in New Zealand permanently to be able to get it.

Contact the Legal Services Agency

Tel: 04 495 5910

Fax: 04 495 5911

Email: info@lsa.govt.nz

Website: www.lsa.govt.nz/legalaid.php

Address: PO Box 5333, Wellington 6145

5. Complaints services

Which complaints service do I use?

Each agency can only deal with certain issues. Usually, an agency needs to know the facts of your complaint before they can tell you if they can help.

In some situations, more than one complaints service may be relevant. This can make it difficult to know which one to approach. The information in this guide is designed to help you decide which service is most relevant. If an agency can not handle your complaint, they may be able to refer you to another agency that can.

It can help to use the complaints processes available before considering more formal legal options.

What if I have a question or complaint about a health or disability service?

The Health and Disability Commissioner

If you have a complaint about a health or disability service, the Health and Disability Commissioner (HDC) may be able to help.

The HDC is an independent agency that helps resolve problems between consumers and providers of health and disability services. This is part of the Code of Health and Disability Services Consumers' Rights 1996 (the Code). The Code applies to all health and disability services in New Zealand, including mental health and addiction services.

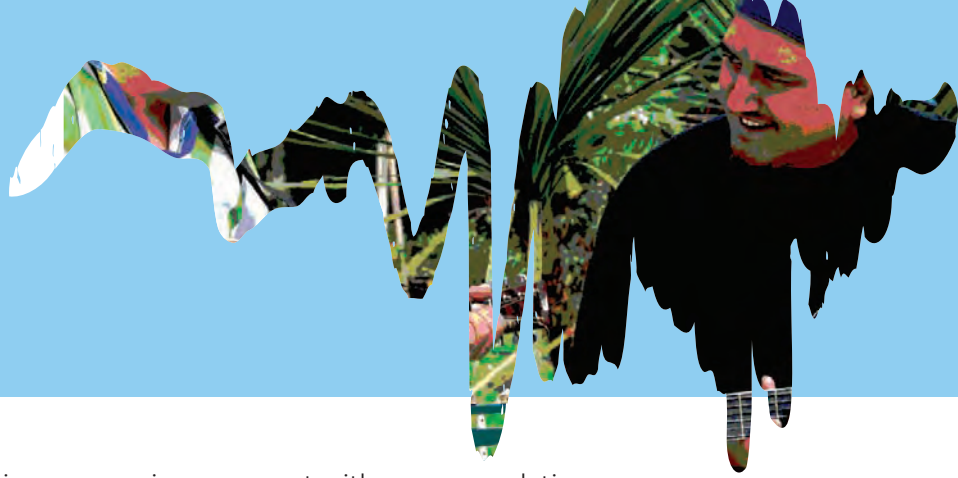
Your rights as a health consumer

The Code includes a consumer's right to:

- respect
- fair treatment
- dignity and independence
- proper standards of care
- effective communication
- information
- decide about treatment and care
- choose a support person
- decide about involvement in health teaching and research
- make complaints.

Complaints process

Anyone can make a complaint to the HDC, verbally or in writing. This includes consumers, their families and other support people, such as staff in a health or disability service. If you have



access to a computer, the easiest way is to fill in the online complaint form. It can also be printed off and filled in by hand.

You can choose whether you make your complaint to the health provider or directly to the HDC.

It is not worth making a complaint to the regulatory bodies for registered health professionals (for example the Medical or Nursing Councils), as they pass complaints about health and disability services to the HDC.

If you complain to the HDC, they will collect information about your complaint and decide whether the Commissioner has the power to handle the complaint. The Commissioner will consider things such as:

- the amount of time since the event you are complaining about and when the complaint was made
- whether the subject matter is insignificant
- whether there is another adequate remedy available or right of appeal.

The Commissioner can only look at “quality of care” issues, not at issues of funding or entitlement to a service.

If the Commissioner can handle the complaint, they have a number of options. Most complaints are dealt with through “education letters”, referral back to the provider, advocacy, and mediation. The Commissioner will try to resolve the complaint without undertaking an investigation.

Complaints made to the Commissioner can be confidential. However, the health provider you complained about will usually be given your name and a copy of the complaint. If the Commissioner finds that your rights have been breached, they can:

- issue a report with recommendations
- refer the case to the Director of Proceedings for referral to the Human Rights Review Tribunal or a disciplinary body (such as the Medical Practitioners’ Disciplinary Tribunal), which can take action against the health provider.

The Human Rights Review Tribunal is less formal than a court. It can make different kinds of orders, such as ordering the health provider to do something to put the situation right or, in some cases, to pay you compensation.

If the Health and Disability Commissioner decides to take your complaint to the Tribunal, a lawyer will be provided for free. You can also take your complaint to the Tribunal yourself at your own cost.

See Appendix 1 for the Health and Disability Commissioner’s complaints process.

Contact the Health and Disability Commissioner

Free phone: 0800 11 22 33

Email: hdc@hdc.org.nz

Website: www.hdc.org.nz

Wellington

Tel: 04 494 7900

Fax: 04 494 7901

PO Box 12229

Wellington 6144

Auckland

Tel: 09 737 1060

Fax: 09 373 1061

PO Box 1791

Auckland 1140

What if I think I have been discriminated against or my human rights have been abused?

The Human Rights Commission

If your complaint is about human rights or you think you have been discriminated against under the Human Rights Act 1993, you can contact the Human Rights Commission (HRC).

Discrimination and harassment

The HRC offers a free, confidential enquiries and complaints service to deal with issues of discrimination and racial or sexual harassment.

Discrimination happens when a person is treated less favourably than someone else in similar circumstances.

The HRC can help by providing advice and information and, if necessary, by mediating your complaint.

The Human Rights Act makes it unlawful to discriminate based on these grounds:

- Sex – includes pregnancy and childbirth; and discrimination against transgender and intersex people because of their sex or gender identity
- Marital status – includes marriages and civil unions that have ended
- Religious belief – not limited to traditional or mainstream religions
- Ethical belief – not having a religious belief
- Colour, race, or ethnic or national origins – includes nationality or citizenship
- Disability – including physical, psychiatric, intellectual or psychological disability or illness
- Age – people are protected from age discrimination if they are 16 years old or over
- Political opinion – includes not having a political opinion
- Employment status – being unemployed or on a benefit. It does not include being employed or being on national superannuation
- Family status – includes not being responsible for children or other dependants
- Sexual orientation – being heterosexual, homosexual, lesbian or bisexual.

The grounds apply to a person's past, present or assumed circumstances. For example, it is unlawful to discriminate against someone because they have a mental illness, had one



in the past, or on the assumption they have a mental illness.

Not all discrimination is unlawful. The Human Rights Act may make it unlawful when it occurs in:

- government or public sector activities
- employment
- business partnerships
- education
- public places, vehicles and facilities
- goods and services
- land, housing and accommodation
- industrial and professional associations, qualifying bodies and vocational training bodies.

Sexual and racial harassment

Sexual harassment and racial harassment are particular types of discrimination.

Sexual harassment is unwelcome or offensive



sexual behaviour that is repeated or significant enough to have a harmful effect on a person.

Racial harassment is behaviour that is racist, hurtful or offensive and is either repeated or serious enough to have a harmful effect on a person.

Indirect discrimination

Indirect discrimination is when an action or policy that appears to treat everyone the same has the effect of discriminating against someone. For example, if the only entrance to a shop is by climbing stairs, that indirectly discriminates against someone who uses a wheelchair.

Other human rights complaints

You can contact the HRC if your complaint is about other human rights issues. The enquiries and complaints service can help by providing advice and information, and by suggesting how best to sort out your issue.

Other agencies

Often conduct that is unlawful under the Act is also covered by other laws. This means issues can be dealt with by making a complaint to the HRC or to another agency. You do not have to make a choice, initially, about whether to go to the HRC or to another agency.

The courts and the police

Some behaviour that is unlawful under the Human Rights Act may also be a criminal offence. For example, some types of sexual harassment may also be sexual assaults. People can make a complaint under the Act and also complain to the police. You do not have to choose one option or the other.

Victimisation

The Human Rights Act protects people from being victimised because they made a complaint or intend to make a complaint, contacted the

HRC about a complaint or supported another person to make a complaint.

Resolution

Most complaints are sorted out by informal intervention or mediation. The end result can include: an apology, an agreement not to do the same thing in the future, undertaking an education or training programme, or compensation.

If the complaint about discrimination is not sorted out at mediation, you can take legal action. Complaints are heard before the Human Rights Review Tribunal. This is like a court. You can apply for free legal representation.

See Appendix 2 for the Human Rights Commission's complaints process.

Contact the Human Rights Commission

Free phone: 0800 496 877

Fax: 09 377 3593

Email: infoline@hrc.co.nz

Website: www.hrc.co.nz

TTY (teletypewriter): 0800 150 111

TXT: 0210 236 4253

Language Line and NZ Sign Language interpreters available.

Auckland

PO Box 6751

Auckland 1141

Wellington

PO Box 12411

Wellington 6144

Christchurch

PO Box 1578

Christchurch 8011

What if I have a complaint about privacy?

The Privacy Commissioner

The Privacy Commissioner can investigate complaints about actions that may be a breach of your privacy rights.

Your rights

The Privacy Act 1993 sets out rules protecting personal information. You have extra rights under the Health Information Privacy Code that covers the health information collected by health agencies.

When a health agency collects information from you, they must tell you:

- why the information is being collected
- who will see the information
- where the information will be stored.

You also have a right to see the information on your medical file and correct it.

Complaints process

Before you make a formal complaint to the Privacy Commissioner it can help to contact the service provider first and let them know about the problem. Service providers can often sort out problems without the need for the Privacy Commissioner to get involved.

All DHBs and service providers should have a privacy officer – someone who is familiar with the Privacy Act and with the agency's information handling practices.

A list of privacy officer contact details can be found on the Privacy Commissioner's website: www.privacy.org.nz/privacy-officer-contacts.

If you are not happy with the service provider's response, you can make a complaint to the Privacy Commissioner. You can complain verbally or in writing. If you make a complaint verbally, it will also need to be put in writing as soon as possible. The staff at the Privacy Commissioner's office can help you do this. You can make the complaint yourself or another person can make the complaint on your behalf.

The Privacy Commissioner will assess whether they can handle your complaint. If it is decided

your complaint comes within their jurisdiction (the things they cover), the Privacy Commissioner will investigate your complaint and try to help you and the agency sort out the matter.

If the complaint can not be resolved and the Privacy Commissioner finds there has been a breach of your privacy, the Privacy Commissioner may refer the case to the Human Rights Review Tribunal.

The Human Rights Review Tribunal may make different kinds of orders, such as ordering the service provider to do something to put the situation right or pay you compensation.

If the Privacy Commissioner decides to take your complaint to the Tribunal, a lawyer will be provided for free. You can take your complaint to the Tribunal yourself at your own cost.

See Appendix 3 for the Privacy Commissioner's complaints process.

Contact the Privacy Commissioner

Free phone: 0800 803 909

Email: enquiries@privacy.org.nz

Website: www.privacy.org.nz

Address: PO Box 466, Auckland 1140

How do I complain about a government agency?

The Ombudsmen

An Ombudsman investigates complaints about government and local government agencies, including the Ministry of Health, District Health Boards, public hospitals and city councils.

You must be personally affected to complain.

Complaints process

Before complaining to an Ombudsman, you should first contact the government agency you want to complain about. If you are unhappy with the way the agency responds to your complaint,



you can contact the Ombudsmen's office. An Ombudsman investigation is free and private.

Where possible, complaints to the Ombudsmen's office should be in writing. Staff at the Ombudsmen's office can help you do this.

An Ombudsman will first look at whether they can take your complaint. If an Ombudsman decides to investigate your complaint, an investigating officer will be appointed. They will contact you and the government agency you complained about for information. If your complaint can not be investigated, the Ombudsmen will tell you why and may direct you to other options or agencies.

At the end of an investigation, an Ombudsman will decide whether the agency has acted unreasonably or unfairly. If your complaint is not upheld, you will have an opportunity to respond before a final decision is made.

An Ombudsman's recommendations are not legally binding but are usually followed.

See Appendix 4 for the Office of the Ombudsmen's complaints process.

Contact the Office of the Ombudsmen

Free phone: 0800 802 602

Complaints: complaint@ombudsmen.parliament.nz

Enquiries: office@ombudsmen.parliament.nz

Website: www.ombudsmen.parliament.nz

Auckland

Tel: 09 379 6102

Fax: 09 377 6537

PO Box 1960

Auckland 1140

Wellington

Tel: 04 473 9533

Fax: 04 471 2254

PO Box 10 152

Wellington 6143

Christchurch

Tel: 03 366 8556

Fax: 03 365 7935

PO Box 13 482

Christchurch 8141

6. Other ways to complain

What if I have a complaint about social services or disability supports?

If you wish to complain about social services or other services you are receiving, such as supported accommodation or disability support, you can do the following:

- make a complaint to the Health and Disability Commissioner (see page 8)
- complain to the District Inspector if you are being assessed or treated under the Mental Health Act (see page 15)
- make a complaint to the Ministry of Health or the Ministry of Social Development.

Contact the Ministry of Health or the Ministry of Social Development

Ministry of Health:

Tel: 04 496 2000

Fax: 04 496 2340

Email: emailmoh@moh.govt.nz

Website: www.moh.govt.nz

Address: PO Box 5013, Wellington 6145

Ministry of Social Development:

Tel: 04 916 3300

Fax: 04 918 0099

Email: information@msd.govt.nz

Website: www.msd.govt.nz

Address: PO Box 1556, Wellington 6140

What if I have a complaint about the police?

If you are unhappy with the way you have been treated by the police, you can make a complaint to the Independent Police Conduct Authority. It

can make recommendations to the Commissioner of Police about how to resolve a complaint. The Independent Police Conduct Authority operates independently of the police.

Contact the Independent Police Conduct Authority

Free phone: 0800 503 728

Tel: 04 499 2050

Fax: 04 499 2053

Email: enquiries@ipca.govt.nz

Website: www.ipca.govt.nz

Address: PO Box 5025, Wellington 6145

What if I have a complaint about prison services?

People in prison can complain to staff, an inspector, or to external agencies, such as the Office of the Ombudsmen, the Privacy Commissioner, the Health and Disabilities Commissioner or the Human Rights Commission. All prisons have access to confidential mail and free-phone facilities for complaints.

Information about making complaints is available on the Department of Correction's website: www.corrections.govt.nz/community-assistance/complaints-procedure.html

Contact the Department of Corrections

Tel: 04 460 3000

Fax: 04 460 3208

Complaints: complaints@corrections.govt.nz

Enquiries: info@corrections.govt.nz

Address: Private Box 1206, Wellington 6140



7. Complaints procedures under the Mental Health (Compulsory Assessment and Treatment) Act 1992

Most people who receive mental health services receive them on a voluntary basis and are not covered under the Mental Health (Compulsory Assessment and Treatment) Act, also known as the Mental Health Act. If you are treated under a compulsory treatment order, there are procedures under the Act that allow you or others acting on your behalf to review your clinical and legal status.



What if I think my rights under the Mental Health Act have been breached?

You are entitled to the rights set out in Part 6 of the Mental Health Act. These apply as soon as you become a “patient” under the Act. They are the right to:

- information
- respect for cultural identity
- an interpreter
- treatment
- be informed about treatment
- refuse video recording
- seek a second psychiatric opinion
- seek legal advice
- company
- have visitors and make telephone calls
- send and receive mail.

When you become a patient, you must be given a written statement of your rights. If you believe any of these rights are breached, you can make a complaint to the District Inspector. If you are not happy with the outcome, you can take your complaint to the Mental Health Review Tribunal or the Health and Disability Commissioner.

What is a District Inspector?

District Inspectors are lawyers with special responsibilities for protecting the rights of people under the Mental Health Act.

If you lodge a complaint with the District Inspector, they must investigate and report to the Director of Area Mental Health Services (DAMHS). This includes recommendations they believe necessary to sort out the situation.

If you are not happy with the District Inspector's investigation, you can apply to the Review Tribunal, which can investigate further.

In addition to investigating a complaint about a breach of your rights, District Inspectors can also:

- give you information about the compulsory assessment and treatment process, and your legal rights
- arrange for a lawyer to represent you
- enquire more generally into any other aspect of patient care and treatment or the management of hospitals or services
- visit and inspect hospitals and other services, including checking the registers recording the use of seclusion, restraint and force.

See Appendix 5 for the District Inspector's investigation process.

How do I contact a District Inspector?

Your local District Inspector may contact you before a compulsory treatment order is made. Or you may ask your mental health worker or service provider for the District Inspector's contact details.

What are the stages of detention and treatment under the Mental Health Act?

Preliminary assessment examination

If someone believes you have a mental disorder, they can apply to the DAMHS through a general practitioner to have you assessed. The duly authorised officer (DAO) or the DAMHS will arrange an assessment examination.

Once an application for an assessment is made, the rights in Part 6 of the Mental Health Act apply.

You will receive a written notice stating that you are required to attend an assessment examination at a specified place and time. The DAO must make sure you are able to get to the examination. They can ask the police to help and you may



be held for up to six hours so the assessment examination can take place.

The examination will usually be carried out by a psychiatrist. They will decide whether there are reasonable grounds to believe you are mentally disordered and if further assessment and treatment is needed. You will be given written notice and a copy of the certificate of preliminary assessment.

A copy of the information will also be sent to:

- the person who applied for the assessment
- your principal caregiver, if you have one
- your doctor (GP)
- your welfare guardian, if you have one

- a District Inspector
- the Director of Area Mental Health Services.

Further assessment and treatment for five days

The psychiatrist responsible for your care will carry out further assessment and treatment as specified in the certificate of preliminary assessment notice. This can be for up to five days. If the clinician decides there are reasonable grounds for further assessment and treatment, you will be given another notice stating further assessment and treatment is required. You will be given a copy of the certificate of further assessment.

A copy of the information will also be sent to:

- the person who applied for the assessment
- your principal caregiver, if you have one
- your doctor (GP)
- your welfare guardian, if you have one
- a District Inspector
- the Director of Area Mental Health Services.

Further assessment and treatment for 14 days

The further assessment and treatment will be carried out at the time and place specified in the certificate of further assessment notice. This can last up to 14 days. If the responsible clinician decides you are fit to be released, you will not have to receive any further treatment under the Mental Health Act. If the clinician decides you can not be released, they must apply for a compulsory treatment order. You will be provided with documents relating to the application for a compulsory treatment order, including the certificate of final assessment, and information about your right to appear before the court.

A copy of the information will also be sent to:

- the person who applied to have you assessed



- your principal caregiver, if you have one
- your doctor (GP)
- your welfare guardian, if you have one
- a District Inspector
- the Director of Area Mental Health Services.

The court must decide whether to make a compulsory treatment order within 14 days after the first 14-day period.

Compulsory treatment order

A compulsory treatment order (CTO) is an order made by a judge. There are two types of CTOs:

- Inpatient CTO – involves treatment in hospital or a mental health unit.
- Community CTO – may involve treatment in your home or residential hostel.

An order can be extended for two more six-month periods. Any third extension lasts indefinitely.

How can I challenge decisions made about me?

Any time during the first and second stages of assessment, you can apply to have a judge review your condition (commonly known as a section 16 review).

You can apply for the review yourself, but if you can't (for example, because you are too unwell or do not feel comfortable doing so), the following people can apply for a review on your behalf:

- the person who made the application to have you assessed
- your principal caregiver, if you have one
- your doctor (GP)
- your welfare guardian, if you have one
- a District Inspector.

The District Inspector can visit you, telephone or write to you during the assessment period,

explain your rights under the Mental Health Act and discuss the option to apply for a review.

How do I oppose a compulsory treatment order?

You have the right to be heard by the court when an application for a compulsory treatment order is made. The hearing takes place in the Family Court (or sometimes in a District Court). The court hearing is not open to the public and only certain people are allowed in the room.

You need to decide whether you will represent yourself or whether you want a lawyer to represent you.

The District Inspector can visit you, telephone or write to you and give you information about the hearing and your rights. The District Inspector can also help you contact a lawyer.

The Mental Health Act states a judge can only make a compulsory treatment order if you have a mental disorder and a compulsory treatment order is needed to make you receive treatment.

How do I dispute the findings of clinical reviews?

The psychiatrist responsible for your care must examine you three months after your compulsory treatment order begins (and then every six months) to see if they believe the compulsory treatment order should continue. These examinations are called clinical reviews. If, after a clinical review, your clinician decides you are fit to be released from compulsory status, the compulsory treatment order ends and you will not have to accept any more treatment. If your clinician decides you are not fit to be released from compulsory status, you will receive a copy of the certificate of clinical review and information about your right to apply to the Review Tribunal for a review of the decision.

A copy of the certificate and the statement must also be sent to:

- your principal caregiver, if you have one
- your doctor (GP)
- your welfare guardian, if you have one
- a District Inspector.

These people also have a right to apply for a review of the decision that you are not fit to be released from compulsory status.

The District Inspector must contact you to discuss your right of review. A District Inspector can help you make an application to the Review Tribunal.

The Review Tribunal will review all the information about your case and ask for an independent report of your condition (from a psychiatrist who has not been involved with your case so far).

Note: the Tribunal can refuse to consider an application for review if it has reviewed your condition in the past three months and determines there is no reason to believe there has been a change in your condition. The Tribunal can also refuse if the application is made by a friend or relative and the Review Tribunal thinks it has not been made in your best interests.

If the Review Tribunal decides you are fit to be released from compulsory status, the compulsory treatment order ends and you do not have to receive any more treatment. If the Review Tribunal finds you are not fit to be released, you will be sent a certificate of Tribunal review explaining the Tribunal's decision and what your legal rights are.

A copy of the certificate will also be sent to:

- the Director of Mental Health
- the Director of Area Mental Health Services
- your principal caregiver, if you have one
- your doctor (GP)
- your welfare guardian, if you have one

- a District Inspector.

After you have been sent the certificate, the District Inspector will contact you about whether you wish to appeal the decision.

What is the Mental Health Review Tribunal?

The Mental Health Review Tribunal can:

- review decisions to continue your compulsory treatment order
- investigate complaints about breaches of your patient rights.

There are three people on the Review Tribunal – a lawyer, a psychiatrist and a community member.

Review Tribunal hearings are informal and not like court hearings. You can attend the hearing, and take a lawyer and support person with you, if you wish.

What if I think I am being unlawfully detained?

If you are in hospital under an inpatient compulsory treatment order, the Mental Health Act gives you an extra protection. Any person can apply to the High Court for a judicial inquiry – an inquiry into the circumstances in which you are being kept in hospital.

A judge can arrange for a District Inspector to investigate your case.

The judge can order that you be discharged if they decide you are being held illegally or are fit to be discharged.

This protection only applies if you are under a compulsory treatment order in hospital – not if you are being treated in the community.

Judicial inquiries are not common. If you want to apply for one, it is recommended you seek further advice. See section three on support, advocacy and advice services.



8. Other resources

Other relevant organisations

The Mental Health Foundation

The Mental Health Foundation is an information service. It does not offer advice, counselling or advocacy. The Foundation has information on a number of subjects, including: mental health, mental illness, mental health services, depression, workplace well-being, stress, Māori mental health, support groups, recovery, relaxation, self-help, older people's mental health and younger people's mental health.

You can download information on a range of mental health topics from their website. If you need help, email a librarian info@mentalhealth.org.nz or call 09 300 7030.

Contact the Mental Health Foundation

Email: info@mentalhealth.org.nz

Website: www.mentalhealth.org.nz

Auckland

Tel: 09 300 7010

Fax: 09 300 7020

PO Box 10051

Auckland 1446

Christchurch

Tel: 03 366 6936

Fax: 03 365 5079

PO Box 13167

Christchurch 8041

Wellington

Tel: 04 384 4002

Fax: 04 384 4003

PO Box 6563

Wellington 6141

Health and disability non-government organisations

For a list of non-government organisations that provide mental health services, such as supported accommodation, day programmes, etc, visit: www.moh.govt.nz/moh.nsf/pagesmh/2106.

Other relevant resources

Mental Health & the Law: A Legal Resource for People Who Experience Mental Illness, by Sarah Mackenzie and Nicola Shirlaw, published by the Wellington Community Law Centre 2002.

The book explains the rights of people who experience mental illness. It covers subjects such as the Mental Health Act, criminal law, taking care of your affairs if you can not, child custody, accommodation issues and welfare benefits.

The resource is available to buy at Community Law Centres or from the Mental Health Foundation's Resource Centre. Tel 09 300 7030 or email resource@mentalhealth.org.nz.

9. Further information

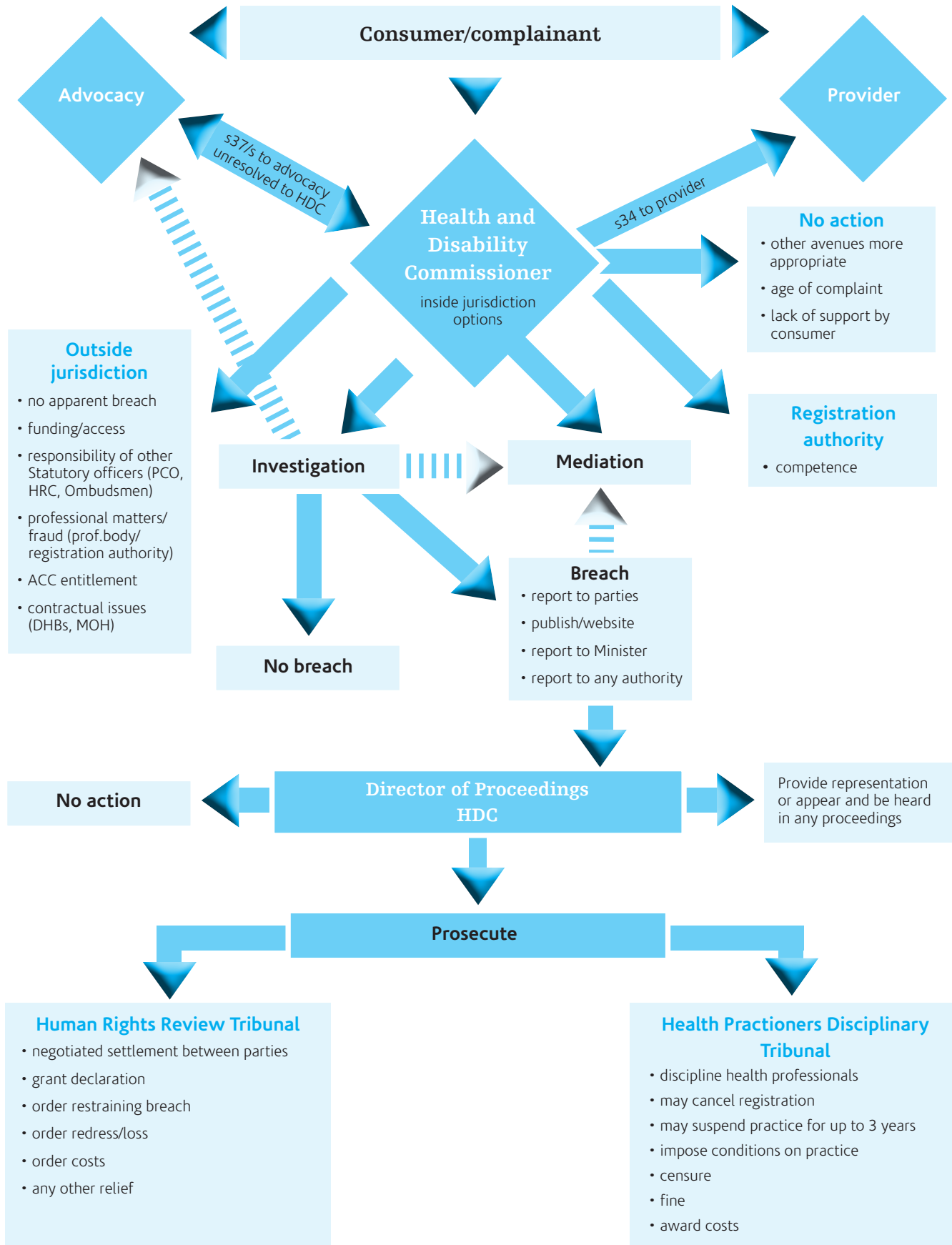
The information in this guide relates only to the law in New Zealand at the time of writing (2010). It is not a substitute for detailed advice.

For more advice on any of the issues discussed in this guide, contact the relevant agency itself or seek advice from a lawyer specialising in mental health law.



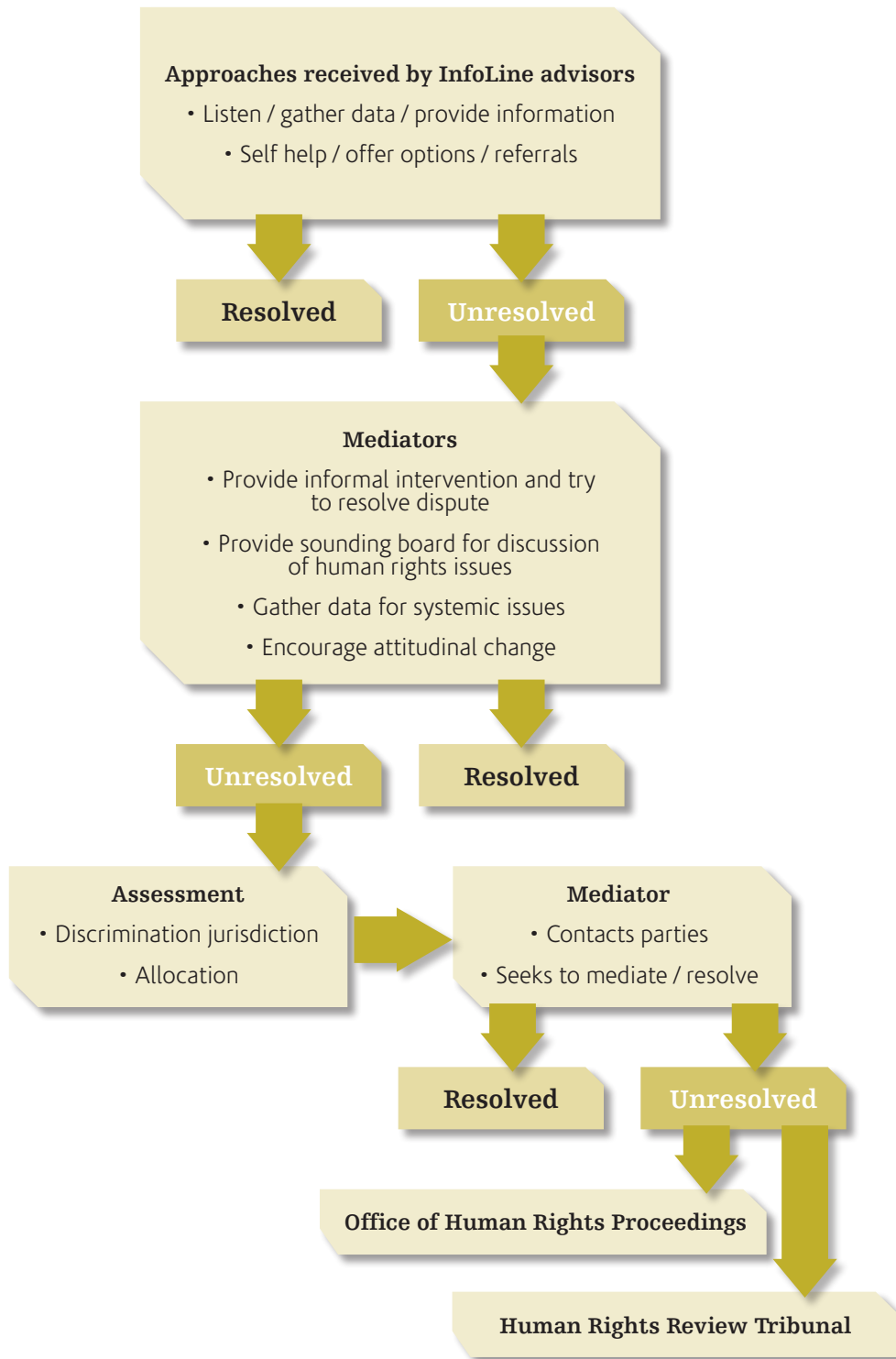
Appendix 1

Health and Disability Commissioner's complaints process



Appendix 2

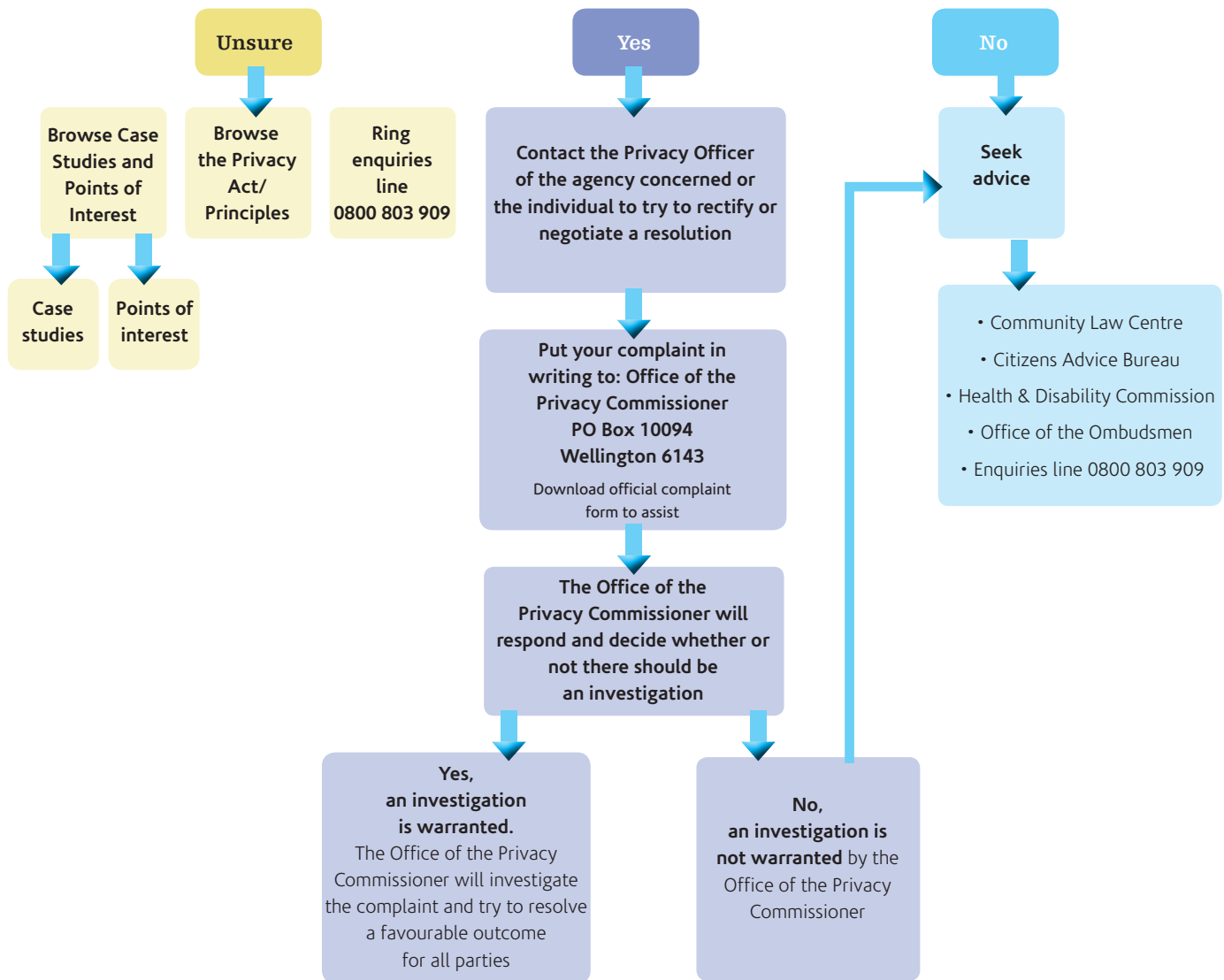
Human Rights Commission’s dispute resolution process – discrimination complaints



Appendix 3

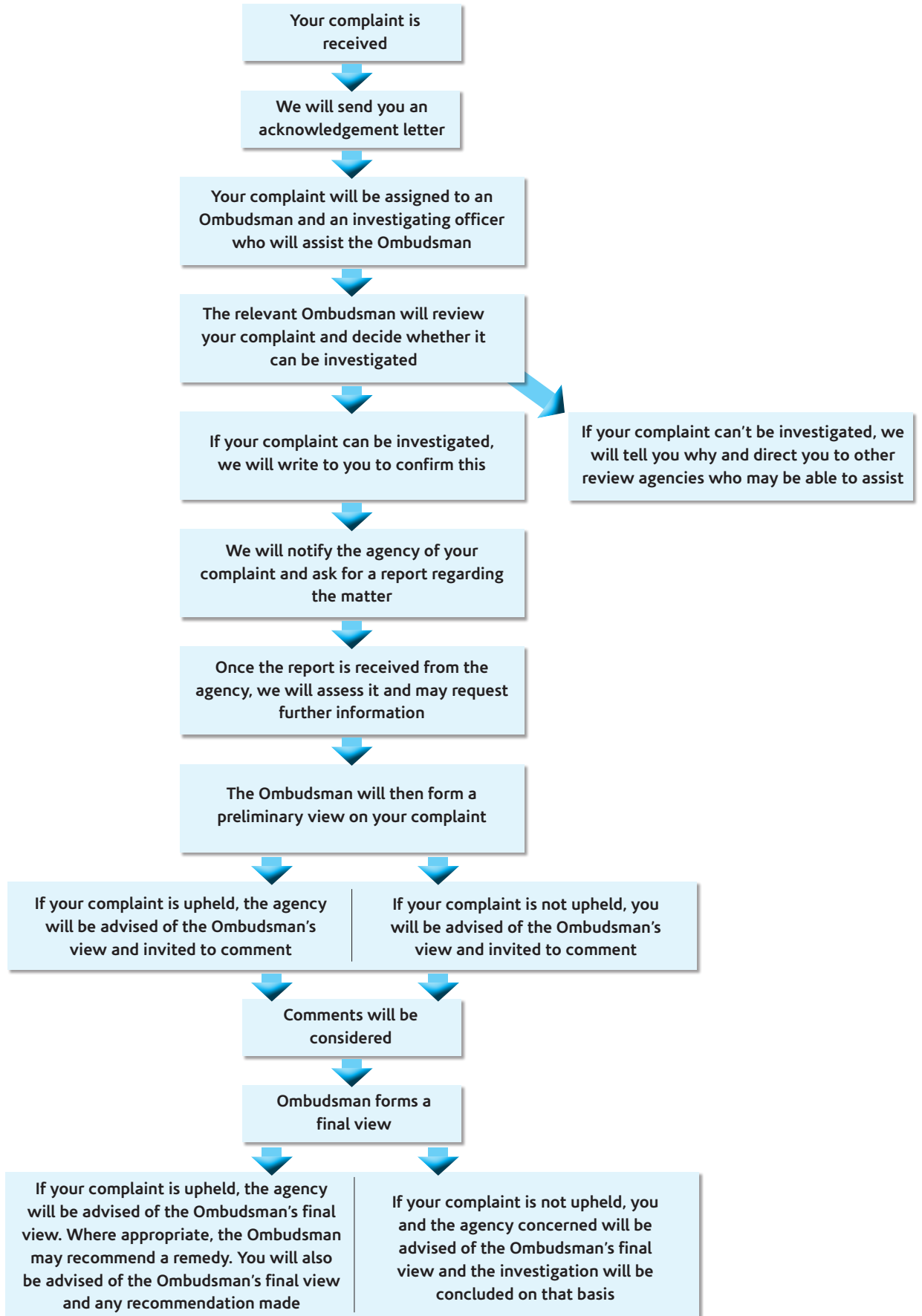
Privacy Commissioner's complaints process

Does your complaint fall within the Privacy Act?



Appendix 4

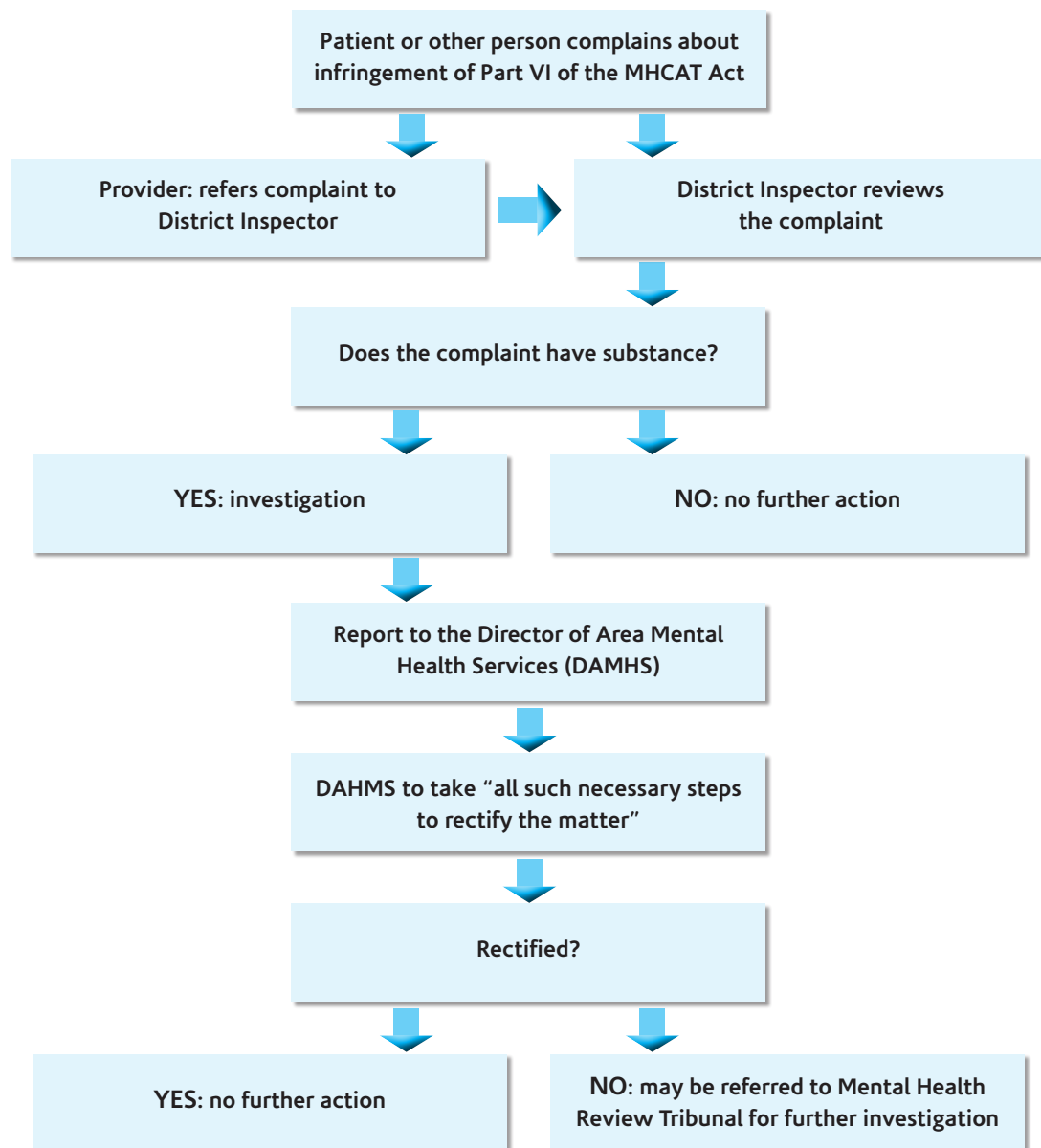
Office of the Ombudsmen's complaints process



Appendix 5

Mental Health (Compulsory Assessment and Treatment) Act 1992 complaints process

Section 75





Human Rights
Commission
Te Kāhui Tika Tangata