



HEALTH & DISABILITY COMMISSIONER  
TE TOIHAU HAUORA, HAUĀTANGA

# Learning from Complaints

Your rights when using a  
health or disability service in  
New Zealand and how to make  
a complaint

## **YOUR RIGHTS WHEN USING A HEALTH OR DISABILITY SERVICE**

### **You have rights**

Everyone using a health or disability service has the protection of a Code of Rights. An independent Commissioner promotes and protects these rights under a New Zealand law called the Health and Disability Commissioner Act 1994.

### **What can I do if I am unhappy about the service, or something goes wrong, and I feel my rights have been breached?**

#### **You can:**

- talk to the person you received the service from, or the person in charge, as he or she may be able to sort out the problem;
- get help and support from family and friends to raise your concerns with the provider;
- seek the support of a free independent health and disability advocate from the Nationwide Advocacy Service to help you resolve your concerns (contact details for advocates are given on the back page of this leaflet).

### **Why should I make a complaint?**

Making a complaint is an important way of improving the quality of services. Most people who make a complaint say they don't want what happened to them to happen to someone else, and most providers find it helpful to know about a consumer's concern so they can take action to sort it out. It may be helpful for you to have an acknowledgement of what happened as well as an explanation and an apology. You may also find it helpful to hear what steps the provider will take to improve his or her service for the benefit of others.

### **How do I make a complaint?**

You can make a complaint in the way that is easiest for you – verbally (in person or by telephone) or in writing (by letter, fax or email).

You can give your complaint to:

- the person or people you are complaining about;
- a person in the organisation responsible for receiving complaints (eg, the complaints officer in a hospital);
- an advocate;
- the Health and Disability Commissioner.

## **What can I expect if I make a complaint**

### **... to the provider?**

Providers must listen to your concerns and keep you informed about their complaints process and what is happening with your complaint. You can expect your complaint to be dealt with promptly, and to receive an explanation about any decisions and actions taken.

### **... to a health and disability advocate?**

An advocate will listen to your concerns and explain the options available to you. Advocates are on the side of the consumer and will support and assist you in the actions you choose to take. Complaints are usually dealt with more quickly through advocacy than by other options. The service is free, confidential, and independent of service providers (such as hospitals), service funders, government agencies, and the Health and Disability Commissioner.

### **... to the Health and Disability Commissioner?**

The Commissioner looks at each complaint and decides whether it is necessary or appropriate to take further action. The Commissioner may then:

- send the matter to an advocate to assist you with your complaint;
- send the complaint to the provider to sort out;
- refer the matter to another agency, such as the Ministry of Health, a health practitioner registration authority, the Privacy Commissioner or a Mental Health District Inspector;
- recommend a mediation meeting; or
- investigate the matter.

In a small number of complaints, the Commissioner may decide to start a formal investigation. An investigation can take some time, as the Commissioner is impartial and needs to allow everyone involved in the complaint to have their say. Not all issues investigated are found to be a breach of the Code. Sometimes there may be no clear outcome and no further action is taken.

You can expect regular communication from the Commissioner's office until a final decision is made. You can also expect an explanation about how the Commissioner has decided to deal with your complaint and what the final decision is.

### **Will the provider be disciplined if my rights have been breached?**

In a small number of investigated complaints the Commissioner may refer the case to the Director of Proceedings. The Director is an independent prosecutor who can take a case to the Health Practitioners Disciplinary Tribunal (HPDT) or to the Human Rights Review Tribunal (HRRT), or both. Information about the Director of Proceedings and cases that have been heard by a Tribunal can be found on the HDC website ([www.hdc.org.nz](http://www.hdc.org.nz)).

### **Can I get compensation if my rights have been breached?**

The Commissioner does not have any power to give compensation. Sometimes providers may agree to a refund as part of resolving the complaint. Some consumers may be entitled to ACC compensation if they have suffered a personal injury from their treatment. In certain limited circumstances, damages are awarded by the HRRT.

# CODE OF RIGHTS

## Right 1

- You should be treated with respect, including respect for your personal privacy.
- Services should take into account your cultural, religious, social and ethnic needs, values and beliefs.

## Right 2

- You should be free from discrimination on the grounds of age, gender, race, beliefs, marital or family status, employment, sexual orientation or disability.
- Services should be delivered without coercion, harassment or any form of exploitation.

## Right 3

- Services should be provided in a way that respects your dignity and independence.

## Right 4

- Services should
  - be provided with reasonable care and skill;
  - meet legal, ethical, professional and other relevant standards;
  - be consistent with your needs;
  - minimise potential harm.
- Providers should co-operate with each other to ensure you have quality care.

## Right 5

- Information should be given in a form, language and manner that you can understand.
- You should be listened to.
- A competent interpreter should be available if you need one and if it is reasonably practicable to provide one.
- Communication should take place in an environment that supports open, honest and effective discussion.

## Right 6

- You should always receive the following information:
  - an explanation of your condition;
  - your options, including the expected risks, side effects, benefits and costs;
  - an estimate of when you will receive a service;
  - advice of any possible involvement in teaching or research;
  - the results of tests or procedures;
  - the information you need to make a decision.
- You should be given honest answers to your questions relating to services. This includes questions about:
  - the identity or qualifications of a provider;
  - your provider's recommendations;
  - how to get another opinion;
  - results of research you were involved in.
- You have a right to request and receive a written summary of information.

## Right 7

- You should receive a service only when you have made an informed choice and given your informed consent.
- You should be presumed to be competent to make choices and give consent unless there are reasonable grounds for a provider to conclude otherwise.
- If you have diminished competence (for example, you are a child), you should be allowed to make choices and give consent to the level of your ability.
- In circumstances where services have to be delivered without your consent, they should be in your best interests. Steps should be taken to discover whether services would be consistent with your wishes, including discussing the matter with available family and close friends.
- You may make a decision in advance, in accordance with common law.

- Your consent should be obtained in writing when you will be involved in research, an experimental procedure, a general anaesthetic or where there are possible significant adverse effects.
- You may refuse services and withdraw your consent.
- You may change to another provider where it is practicable to do so.
- You may make decisions about the storage or use of your body parts or bodily substances.

### **Right 8**

- You may have a support person or persons of your choice with you, as long as it is safe and other consumers' rights are not unreasonably affected.

### **Right 9**

- All of these rights apply when you are being asked about or taking part in teaching or research.

### **Right 10**

- You may make a complaint in any form appropriate to you.
- You should be advised of your provider's complaints and appeals procedure.
- You should be kept informed about the progress and outcome of your complaint.
- You should be advised of the availability of advocates and the Health and Disability Commissioner to assist with your complaint.
- You should not be adversely affected as a result of making a complaint.

### **Do these rights always apply?**

- Sometimes providers may not be able to meet all of these rights. However, they must always do what they reasonably can under the circumstances.



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### **Further information and contact details**

For further information and help, or to request information on self-advocacy or how to make a complaint, contact:

#### **The Nationwide Health and Disability Advocacy Service**

Free Phone: 0800 555 050

Free Fax: 0800 2 SUPPORT / 0800 2787 7678

Email: [advocacy@advocacy.org.nz](mailto:advocacy@advocacy.org.nz)

[www.advocacy.org.nz](http://www.advocacy.org.nz)

#### **The Health and Disability Commissioner**

PO Box 1791, Auckland

Auckland: ph (09) 373 1060

Wellington: (04) 494 7900

Other areas: ph 0800 11 22 33

Fax: (09) 373 1061

Email: [hdc@hdc.org.nz](mailto:hdc@hdc.org.nz)

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