



MINISTRY OF
JUSTICE
Tabū o te Ture

**PROPOSED STRUCTURE AND CONTENT FOR
NEW ZEALAND'S VICTIMS CODE:
For comment**

NOT GOVERNMENT POLICY

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1. Introduction

Purpose of this report

This report proposes the structure and content of draft New Zealand Victims Code (the Code). The purpose of the Code is to make available to victims information that is consistent with the Victims' Rights Act 2002 and any other Act about the rights of victims, the services available to victims from government agencies and other organisations, and the duties and obligations of service providers.

The proposed structure and content of the Code is informed by the policy intention for the Code, as set out in the 2010 Cabinet paper *Enhancing Victims' Rights Review*. This paper and information on the associated public consultation is available on the Ministry of Justice website.¹ The proposed structure and content of the Code in this report also draws on the submissions to the Enhancing Victims Rights Review 2010 and findings from a set of targeted engagement events and processes hosted by the Victims Centre between October and December 2011.

This report informs discussions during the second stage of our Victims Code engagement plan in February and March 2012. These discussions will assist in our drafting of a Code that will be ready for the Minister of Justice to consider in April 2012. The Ministry of Justice is happy to receive further comments on the proposed structure and content of the Code. Formal public consultation on a draft Victims Code can occur once the Minister of Justice agrees to present a draft Victims Code to Cabinet and should Cabinet agree its release.

Who is this report for?

We invite comment from any interested person or organisation. The report is available on the Victims Information website (www.victimsinfo.govt.nz) and has been emailed to the individuals and organisations who have supplied their email address during the engagement process to date.

Structure of this report

Section 2 of this report provides an overview of the proposed structure and content of the Code and the engagement findings that have led to the proposed approach. Section 3 concludes with questions we would like the reader to consider.

The report is supported by the following background information:

- an overview of the engagement plan (Appendix 1); and
- the summary version of the Health and Disability Code of Consumers' Rights (Appendix 2).

How to have your say about the proposed structure and content of the Code

The report concludes with some questions that we invite the reader to consider. Your feedback on the proposed approach and the policy issues identified will help to shape the draft Code if received by **Friday 24 February 2012**. Please send to:

Victims Centre
Ministry of Justice
SX10088
Wellington

Or by email to: victimscentre@justice.govt.nz.

¹ <http://www.justice.govt.nz/policy/supporting-victims/enhancing-victims-rights-review>

2. Proposed structure and content of a Victims Code

Summary of proposed structure and content of a Victims Code

We seek your views on the proposal to model New Zealand's Victims Code (the Code) on New Zealand's Health and Disability Code of Consumers' Rights (including a long form and a summary document).

Specifically, we seek your views on the proposal that the structure and content of the Code:

1. is made up of a simple set of the rights and the outcomes we want for all victims of an offence;
2. acknowledges victims' diverse and specialist needs in relation to healing and recovery from harm;
3. provides direction on how agencies can consider the needs of Māori victims across all aspects of the Code so that services are accessible and appropriate for Māori;
4. acknowledges that victims and witnesses need effective information and appropriate support while participating in the criminal justice process;
5. links to a consistent and robust approach to complaints and feedback processes across the government agencies with responsibilities under the Code; and
6. is supported by an evidence-based strategy for the development of victim services and an action plan to disseminate and promote the Code.

We also seek your views on the following scope of services included in the Code:

7. The services that could be included in the implementation of the Code: Cabinet agreed that the Code outline the duties and responsibilities of government agencies and would list services provided to victims by government agencies and *some* other organisations. A number of non government agency representatives we spoke to felt that the Code should apply to *all* service providers working with victims.

This report seeks your view on two options for including non government agencies in the implementation of the Code.

Point 1: Is made up of a simple set of the rights and the outcomes we want for all victims of an offence

The Code needs to consist of a simple set of the rights and the outcomes we want for victims of an offence. In our discussions so far, there has been widespread support for a Code that is modelled on New Zealand's Health and Disability Code of Consumers' Rights.² The Victims of Crime Reform Bill describes the code as meaning 'the code for victims'. For consistency and in the absence of an alternative word that adequately describes the range of people the Code will cover, we propose that the Code continues to refer to the word 'victim'.³

These rights and outcomes need to be easily understood by a wide range of people. Many people we spoke to see the Code as an opportunity to communicate commonly held values on the way all people should be treated. In the meetings, workshops and hui we held, people talked about:

- concepts of empowerment, safety, holistic healing and recovery, justice, informed choice, respect and dignity, privacy, quality information, services of an appropriate standard and effective communication.
- Māori spoke of whānaungatanga as a guiding concept that connects whānau, hapū and iwi. It encapsulates the tikanga of tapu, mana, and their expression through the principles of tika, pono and aroha.
- for minority ethnic groups in New Zealand (such as Pacific, African and Asian populations), victim outcomes need to be expressed in concepts that are relevant and meaningful for their language and culture.

We propose that the Code gives consistent rights to all service users, as enshrined in law. The outcome we want to achieve for all victims is that their rights are upheld and they receive a quality service, but we recognise that there are many paths to achieving this. The Code needs to be inclusive of all cultures and approaches. Multiple language versions of the Code should be made available.

² The Health and Disability Code of Consumers' Rights outlines a set of 10 rights that promotes quality care for consumers of all health and disability services and a process for resolving problems between consumers and service providers. See Appendix 5 for the summary version of this code.

³ The word 'victim' does not sit easily with people affected by crime, the community and service providers because it is perceived as having negative connotations, has a deficit-focus and can feel disempowering. In our discussions, no one was able to identify an adequate alternative word that could describe the people affected by the range of experiences that the Victims Code will cover (i.e., offences in the home, the workplace and in public places). The Victims Code will reflect the current wording in the Victims' Right Act.

Point 2: Acknowledges victims' diverse and specialist needs in relation to healing and recovery from harm

In promoting rights and outcomes for all, the Code needs to acknowledge that this does not equate to services treating everyone the same. People's special characteristics and diverse needs should be acknowledged as part of any good service delivery. In order to build an effective response for all victims, service providers must have the necessary skills and professional attitudes to meet victims' needs, considering:

- *Specialist needs by crime type:* Some offences, by their nature, have such a significant impact that specialist rights and services are needed. The Code needs to state that service providers must be responsive to the specific rights of victims of the certain offences and facilitate access to specialist treatment and care where required.⁴
- *Specific needs:* The Code also needs to acknowledge that the type of offence alone does not determine the impact on a person or how services need to respond. People who are at the greatest risk of victimisation can be the hardest for services to reach and the most vulnerable in our communities - such children and younger people, people in deprived communities, students, the unemployed, those on a benefit (due to health and disability issues), Maori and minority ethnic groups, and those living in rented accommodation.⁵ Service providers need to be able to recognise the physical, financial, social, spiritual and emotional impact associated with the offence inflicted on victims and facilitate access to services that match their needs and cultural values.

The Victims' Rights Act 2002 defines a victim is any person against whom an offence is committed or alleged to have been committed by another person. The definition of a victim includes parents of child victims and close family and whānau members of a person who has died or been made incapable, unless that parent, guardian or close family member is charged with the commission of the offence.

A number of participants view the definition of a victim in the Victims' Rights Act as narrowly focusing on the person or people directly affected by an offence and their representatives (i.e. parents and guardians for children). Participants talked about the ripple-effect of an offence going further than the immediate victim. If we are to adequately address the impact of crime and prevent repeat victimisation, the Code needs to guide services to be inclusive of and responsive to the needs of siblings; extended family members; whānau, hapū and iwi; friends; work colleagues and communities.

⁴ In the Victims' Rights Act, these offences are a) sexual violation and other serious assault; b) an offence causing serious injury, in the death of a person, or in a person being made incapable (incapacitated); and c) an offence where victims have ongoing fears for the physical safety or security of either themselves, or immediate family members (including situations of domestic violence).

⁵ See the results from the Ministry of Justice's New Zealand Crime and Safety Survey (2009), which can be found at <http://www.justice.govt.nz/publications/global-publications/c/NZCASS-2009/nz-crime-and-safety-survey-2009/?searchterm=NZCASS>.

Point 3: Provides direction on how agencies can consider the needs of Māori victims across all aspects of the Code so that services are accessible and appropriate for Māori

We propose that direction on what delivering a quality service to Māori means in practice is provided throughout the Code and any supporting information. We plan to identify a contractor who can work alongside the Ministry of Justice as we draft the Code to ensure that this occurs. The *Enhancing Victims' Rights Review* Cabinet paper stated that the Victims Code will include a consideration of the needs of Māori victims. Risk factors for being a victim cluster for Māori due to the profile of the Māori population. This means some Māori carry a heavier burden of risk of both single and repeat victimisation.

The Code is an important mechanism for improving the quality of services. Government agencies need to ensure that services are accessible and appropriate for Māori, particular as government agencies deliver or fund many of the support services available for victims.

We asked hui participants for their views on what 'a consideration of the needs of Māori' could mean for the Code. There was widespread agreement from hui participants that the Victims Code would be more accessible to Māori if the Treaty of Waitangi (the Treaty) were specifically recognised within this format. The expressed rationale was two-fold:

- The Treaty provides the platform for the Crown and iwi to form governance-level partnerships to address crucial issues, like victimisation. Particularly in a post Treaty settlement environment, government agencies need to work in partnership with Māori as leaders of Māori solutions to Māori issues.
- Iwi and kaupapa Māori service providers said that they provide services to those who are at the greatest risk of victimisation and revictimisation but who tend not to approach mainstream government and non government services. Acknowledging the Treaty in the Victims Code could result in iwi and kaupapa Māori service providers seeing the Code as inclusive of their work.

Others have expressed the view that specific activities and references to Māori (and by implication the Treaty) singles out one group of New Zealanders for special mention and is therefore not desirable. Another view expressed was that some Māori are not connected to their culture and may not be interested in engaging with services that are based on Māori culture.

We propose that the Code needs to be inclusive of kaupapa Māori services and help to empower Māori to make informed choices for accessing appropriate services. This includes acknowledging the right of Māori victims to choose the type of service they wish to receive (kaupapa Maori services and/or mainstream services).

Point 4: Acknowledges that victims and witnesses need effective information and appropriate support while participating in the criminal justice process

The Code needs to acknowledge that every victim has the right to quality information on the criminal justice process so that they can make informed decisions regarding whether or not to participate, and at what level. While many victims receive excellent services from individual people or agencies, others find their experience of the criminal justice agencies and associate support agencies overall confusing and inadequate, adding to their distress and providing further trauma.

Participants described the criminal justice process as extremely challenging for victims, which can impact negatively on their recovery. New Zealand's adversarial criminal justice system is centred on the State investigating and prosecuting a case on behalf of the public. Much of the State's resources and attention are focused on the accused or the offender of a crime, which can be difficult for victims to accept. The court layout can be challenging, with the victims and offenders and their family, whānau and supporters sitting in the same areas outside and inside the court room.

People need to be provided with the opportunity to make an informed choice on whether to participate in the criminal justice system or not, such as decisions relating to attendance at court and the need for information or notification on events related to the offender. It is important that people who choose not to participate are also aware of their right to re-engage with services at any time.

Point 5: Links to a consistent and robust approach to complaints and feedback processes across the government agencies with responsibilities under the Code

The Victims of Crime Reform Bill proposes that any person or organisation who provides services outlined in the Victims' Rights Act, and who receives a complaint regarding that right must deal with that complaint promptly and fairly. The Bill also states that certain government agencies will become more transparent and accountable in dealing with complaints, by publishing in their Annual Report to Parliament:

- summary of the services provided to victims;
- the number of complaints received from victims; and
- how the complaints were dealt with.

A number of issues were raised about the proposed model for improving government accountability and transparency:

- victims of crime tend not to complain, particularly those who are reluctant to engage with government agencies and may be the most vulnerable;
- current independent review processes available to victims (the Office of the Ombudsmen and the Independent Policy Conduct Authority) are overly bureaucratic and not appropriate for many victims, including Māori, young people and others vulnerable to crime;
- there needs to be a consistent simple model for managing and responding to complaints across all government agencies, so that the data is comparable and victims find the system accessible;
- accountability and transparency should not stop with government agencies, as non government agencies are contracted by government to provide services; and
- victims of an offence need an opportunity to provide both positive and negative feedback on their experiences. Positive feedback would help agencies to know what is working well and could help other services to know how they can improve their services.

We propose to suggest to the Minister of Justice that government agencies develop a consistent approach to complaints and feedback processes. This would avoid victims dealing with multiple and confusing processes.

Point 6: Is supported by an evidence-based strategy for the development of victim services and an action plan to promote the Victims Code

The 2010 Cabinet paper *Enhancing Victims' Rights Review* states that the reforms outlined aim to raise victims' confidence in the criminal justice system, through improving the accountability of government agencies. The Victims Centre was established in July 2011 to provide oversight of victims' rights and resources across government and to encourage agencies to adopt best practices in meeting their obligations to victims.

Some engagement participants noted that victim dissatisfaction could increase if awareness is raised without a corresponding improvement in services. In addition, greater awareness could drive an increased demand for services beyond what is currently resourced. We received a range of suggestions about what needs to change to achieve an accessible, appropriate, comprehensive and sustained system of support for victims. Key themes included the need for victims to be listened to and taken seriously, for service duplication and overlaps to be reduced, for clearer information on the duties and responsibilities of agencies and for better service coordination and collaboration.

The Victims Centre has recently commissioned two research projects to start developing an evidence base on information and responses to victims:

- a literature review providing up-to-date evidence on current and recommended practice and identifying any information gaps; and
- qualitative research with victims of serious crime, specifically in relation to their experience and perceptions of the information and service they received from the criminal justice system.

The learning from this and other research, alongside the valuable feedback we have received during the engagement process, could be useful for shaping the development of a consistent, strategic approach to the delivery of victims' services. We suggest that for the Code to result in tangible improvements to the quality of services, it needs to be supported by a cross-sector strategy and action plan that will help to drive system-wide improvements delivered across the criminal justice, employment, health and social services.

Issue 1: The scope of services included in the Code

The Victims of Crime Reform Bill provides the opportunity for the services of other organisations to be voluntarily listed in the Code. In the engagement process we asked participants from non government agencies how services provided by non government agencies could be included in the Code and whether they would want their services listed.

There was widespread agreement across participating non government agencies and others (such as the Victims Reference Group members and iwi and Maori representatives) that the application of the Code should be broad in nature, because victims utilise a range of services from both government and non government agencies. The Health and Disability Code of Consumers' Rights applies to all providers of services to victims (including non government and iwi providers) and this was cited as a model that promoted improvements in the quality of care across all services. The Health and Disability Code of Consumers' Rights does not include a list of services available, and this information is sourced by consumers from elsewhere.

We propose (as suggested by participating non government agency representatives) that the requirement for non government agencies to implement the Code could be clearly communicated in government-funded contracts. We present two options for the scope of the services provided by non government agencies that could be required to implement the Code.

Issue 1: Which services provided by non government agencies could be included in the implementation of the Code?

Option 1: The Code applies to specific non government agencies funded to provide direct services to victims and who voluntarily agree to have the Code included in their government-funded contract.

Non government agencies that are funded by government agencies to provide services to victims of offence (such as Victim Support, restorative justice providers, women's refuges, and sexual violence providers) could be invited to voluntarily agree to have a responsibility to deliver services to the quality outlined in the Code. This could be specified in their government-funded contracts.

OR

Option 2: The Code applies to any person or organisation providing a service to victims of an offence and this is specified in all relevant government-funded service contracts.

The Code would apply to a broader range of services -non government agencies explicitly funded to provide services to victims as well as those whose client base includes people who are victims of an offence. For example, a non government agency may be providing parenting services to members of a family or whānau who have experienced abuse or a crime committed against them. This agency would therefore need to ensure that the members of this family or whānau would receive services that reflect the rights in the Code.

3. Questions to consider

Questions to consider

1. Do you agree or disagree with the proposed content and structure of the Victims Code?
2. What specific proposals do you agree with or disagree with? Why?
3. Which services should be included in the implementation of the Code?
 - a) How do you think non government agencies could be included in the Code?
 - b) Should all non government agencies be required to implement the Code or should it be limited to those with specific contracts to deliver services to victims (such as Victim Support, women's refuges, restorative justice providers and sexual violence services)? Please explain.
 - c) Do you think that referencing the Code in government-funded contracts with non government agencies is an effective way to communicate the responsibility to implement the Code? Why/Why not?

If you would like to provide feedback on the content of this report, please respond by **Friday 24 February** to:

Victims Centre
Ministry of Justice
SX10088
Wellington

Or by email to: victimscentre@justice.govt.nz.

Appendix 1: Background to this report

Background to the Victims Code

The Enhancing Victims Rights' Review (2010) noted that victims find the criminal justice process confusing, particularly due to the number of agencies involved and experience difficulties in getting information on services available to them. These difficulties can erode victims' confidence in the criminal justice system and negatively impact on the reporting of crime. It is intended that a Victims' Code will:

- increase victims' confidence in, and participation in, the criminal justice system;
- give people who experience an offence a greater ability to source the advice and support they need following an offence against them; and
- provide a platform for agencies to work in partnership to achieve best outcomes for victims.

Cabinet directed the Ministry of Justice, supported by an inter-agency working group, to develop the Code by October 2011 [CBC Min (11) 4/1 refers].⁶ The Code will reflect the definition of a victim in the Act and will outline victims' rights, list the services provided to victims of crime by certain government agencies⁷ and some non government agencies, and outline agencies' complaints processes and feedback mechanisms. The Code itself will not confer any rights, but may be used to assist resolving a complaint from a victim.

Engagement events

An engagement plan was established to inform our thinking on the development of the Victims Code and the future direction of the Victims Centre, including Victim Information resources.

Objectives relating to development of the Victims Code

Engaging with victims and the wider community at the start of the development of the Code is critical for raising awareness of the value of a Code and learning about the context in which the Code will be implemented. These events aimed to inform thinking on:

- shared outcomes for victims and their families and whānau that we want to see achieved;
- achieving a common understanding of the purpose of the Victims Code (the Code) and how it could contribute to achieving the desired outcomes for victims;
- a model for the Code (scope, structure and content) that will ensure that government agencies are more responsive and accountable to victims;
- how the services of non government agencies could best be included in the Code;
- how to measure whether victims are better off over time and if government has improved the delivery of services to victims as a result of the Code; and
- how the Code could enhance the delivery of services to victims with unique needs, including Māori, victims in hard to reach communities, and victims of sexual and domestic violence.

Objectives relating to the development of the Victims Information Resources and the Victims Centre

The Victims Centre was established to provide oversight of victims' rights and resources across government. In the initial establishment phase the Victims Centre sits within the Crime and Social

⁶ <http://www.justice.govt.nz/publications/global-publications/v/victims-of-crime-reform-bill-cabinet-paper/publication>

⁷ Ministry of Justice, Department of Corrections, New Zealand Police, Department of Labour, Ministry of Social Development (including Child, Youth and Family), and Crown Law.

Policy team, runs an inter-agency working group, monitors the offender levy and manages Victims Information resources.

The engagement events will also help to inform the Ministry of Justice’s advice to the Minister of Justice on the future direction and function of the Victims Centre (in June 2012). These events provided an opportunity to:

- gather feedback from stakeholders on how well current resources are meeting the information needs of victims and service providers;
- gauge potential interest in a network of service providers and other key stakeholders aimed at improving the quality of services for victims; and
- identify how the Victims Centre could support the future development of the work of social, health and justice sector agencies working with victims.

Events informing this report

Information shared at the following events and processes have been considered in the development of this report:

Table 1: Summary of stakeholder events held (October - December 2011)

Stakeholders	Type of engagement
Victims Reference Group ⁸	<ul style="list-style-type: none"> • meeting held in November 2011, email and telephone contact with members.
Iwi and Māori organisations	<ul style="list-style-type: none"> • Māori Advisory Group meeting in November 2011 • five regional hui to discuss how the Victims Code could be designed to improve government agencies’ responsiveness to Māori victims and their whānau. • Ministry of Social Development’s Family Violence Māori Reference Group briefed on the engagement plan. A further meeting planned for February 2012.
Cross-sector meetings and workshops	<ul style="list-style-type: none"> • monthly inter-agency meetings with officials from New Zealand Police, Ministry of Social Development (Child, Youth and Family), Department of Corrections, Crown Law, Department of Labour, Accident Compensation Corporation (ACC) and the Ministry of Health. • five regional workshops that involve cross-sector discussions on the form and content of the Victims Code. • presentations and workshops at the Victim Support Conference and the Restorative Justice Conference. • workshop with the following non government organisations: Victim Support, TOAH-NNEST, Restorative Justice Aotearoa, National Network of Stopping Violence Services, Rethinking Crime and Punishment, Barnardos, Catholic Social Services and Sensible Sentencing Trust. • presentations to the TOAH-NNEST⁹ Executive Committee and the NGO Alliance.

Summary of feedback from engagement events

A paper that summarises the feedback we received at the engagement events can be found on the Victims Information website at www.victimsinfo.govt.nz.

⁸ <http://www.victimsinfo.govt.nz/assets/Victims-Reference-Group.pdf>

⁹ Te Ohaaki a Hine – National Network for Ending Sexual Violence Together

Appendix 2: Health and Disability Code of Consumers' Rights (summary version)

Note: A full version of this Code can be found at <http://www.hdc.org.nz/the-act--code>

1. Consumers have Rights and Providers have Duties:

- 1) Every consumer has the rights in this Code.
- 2) Every provider is subject to the duties in this Code.
- 3) Every provider must take action to -
 - a) Inform consumers of their rights; and
 - b) Enable consumers to exercise their rights.

2. Rights of Consumers and Duties of Providers:

The rights of consumers and the duties of providers under this Code are as follows:

RIGHT 1

Right to be Treated with Respect

- 1) Every consumer has the right to be treated with respect.
- 2) Every consumer has the right to have his or her privacy respected.
- 3) Every consumer has the right to be provided with services that take into account the needs, values, and beliefs of different cultural, religious, social, and ethnic groups, including the needs, values, and beliefs of Māori.

RIGHT 2

Right to Freedom from Discrimination, Coercion, Harassment, and Exploitation

Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.

RIGHT 3

Right to Dignity and Independence

Every consumer has the right to have services provided in a manner that respects the dignity and independence of the individual.

RIGHT 4

Right to Services of an Appropriate Standard

- 1) Every consumer has the right to have services provided with reasonable care and skill.
- 2) Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.
- 3) Every consumer has the right to have services provided in a manner consistent with his or her needs.

4) Every consumer has the right to have services provided in a manner that minimises the potential harm to, and optimises the quality of life of, that consumer.

5) Every consumer has the right to co-operation among providers to ensure quality and continuity of services.

RIGHT 5

Right to Effective Communication

1) Every consumer has the right to effective communication in a form, language, and manner that enables the consumer to understand the information provided. Where necessary and reasonably practicable, this includes the right to a competent interpreter.

2) Every consumer has the right to an environment that enables both consumer and provider to communicate openly, honestly, and effectively.

RIGHT 6

Right to be Fully Informed

1) Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including -

a) An explanation of his or her condition; and

b) An explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; and

c) Advice of the estimated time within which the services will be provided; and

d) Notification of any proposed participation in teaching or research, including whether the research requires and has received ethical approval; and

e) Any other information required by legal, professional, ethical, and other relevant standards; and

f) The results of tests; and

g) The results of procedures.

2) Before making a choice or giving consent, every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent.

3) Every consumer has the right to honest and accurate answers to questions relating to services, including questions about -

a) The identity and qualifications of the provider; and

b) The recommendation of the provider; and

c) How to obtain an opinion from another provider; and

d) The results of research.

4) Every consumer has the right to receive, on request, a written summary of information provided.

RIGHT 7

Right to Make an Informed Choice and Give Informed Consent

1) Services may be provided to a consumer only if that consumer makes an informed choice and gives informed consent, except where any enactment, or the common law, or any other provision of this Code provides otherwise.

2) Every consumer must be presumed competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing that the consumer is not competent.

- 3) Where a consumer has diminished competence, that consumer retains the right to make informed choices and give informed consent, to the extent appropriate to his or her level of competence.
- 4) Where a consumer is not competent to make an informed choice and give informed consent, and no person entitled to consent on behalf of the consumer is available, the provider may provide services where -
- a) It is in the best interests of the consumer; and
 - b) Reasonable steps have been taken to ascertain the views of the consumer; and
 - c) Either, -
 - i. If the consumer's views have been ascertained, and having regard to those views, the provider believes, on reasonable grounds, that the provision of the services is consistent with the informed choice the consumer would make if he or she were competent; or
 - ii. If the consumer's views have not been ascertained, the provider takes into account the views of other suitable persons who are interested in the welfare of the consumer and available to advise the provider.
- 5) Every consumer may use an advance directive in accordance with the common law.
- 6) Where informed consent to a health care procedure is required, it must be in writing if -
- a) The consumer is to participate in any research; or
 - b) The procedure is experimental; or
 - c) The consumer will be under general anaesthetic; or
 - d) There is a significant risk of adverse effects on the consumer.
- 7) Every consumer has the right to refuse services and to withdraw consent to services.
- 8) Every consumer has the right to express a preference as to who will provide services and have that preference met where practicable.
- 9) Every consumer has the right to make a decision about the return or disposal of any body parts or bodily substances removed or obtained in the course of a health care procedure.
- 10) No body part or bodily substance removed or obtained in the course of a health care procedure may be stored, preserved, or used otherwise than
- (a) with the informed consent of the consumer; or
 - (b) For the purposes of research that has received the approval of an ethics committee; or
 - (c) For the purposes of 1 or more of the following activities, being activities that are each undertaken to assure or improve the quality of services:
 - (i) a professionally recognised quality assurance programme;
 - (ii) an external audit of services;
 - (iii) an external evaluation of services.

RIGHT 8
Right to Support

Every consumer has the right to have one or more support persons of his or her choice present, except where safety may be compromised or another consumer's rights may be unreasonably infringed.

RIGHT 9
Rights in Respect of Teaching or Research

The rights in this Code extend to those occasions when a consumer is participating in, or it is proposed that a consumer participate in, teaching or research.

RIGHT 10
Right to Complain

- 1) Every consumer has the right to complain about a provider in any form appropriate to the consumer.
- 2) Every consumer may make a complaint to -
 - a) The individual or individuals who provided the services complained of; and
 - b) Any person authorised to receive complaints about that provider; and
 - c) Any other appropriate person, including -
 - i. An independent advocate provided under the Health and Disability Commissioner Act 1994; and
 - ii. The Health and Disability Commissioner.
- 3) Every provider must facilitate the fair, simple, speedy, and efficient resolution of complaints.
- 4) Every provider must inform a consumer about progress on the consumer's complaint at intervals of not more than 1 month.
- 5) Every provider must comply with all the other relevant rights in this Code when dealing with complaints.
- 6) Every provider, unless an employee of a provider, must have a complaints procedure that ensures that -
 - a) The complaint is acknowledged in writing within 5 working days of receipt, unless it has been resolved to the satisfaction of the consumer within that period; and
 - b) The consumer is informed of any relevant internal and external complaints procedures, including the availability of -
 - i. Independent advocates provided under the Health and Disability Commissioner Act 1994; and
 - ii. The Health and Disability Commissioner; and
 - c) The consumer's complaint and the actions of the provider regarding that complaint are documented; and
 - d) The consumer receives all information held by the provider that is or may be relevant to the complaint.
- 7) Within 10 working days of giving written acknowledgement of a complaint, the provider must, -
 - a) Decide whether the provider -
 - i. Accepts that the complaint is justified; or
 - ii. Does not accept that the complaint is justified; or
 - b) If it decides that more time is needed to investigate the complaint, -
 - i. Determine how much additional time is needed; and

ii. If that additional time is more than 20 working days, inform the consumer of that determination and of the reasons for it.

8) As soon as practicable after a provider decides whether or not it accepts that a complaint is justified, the provider must inform the consumer of -

- a) The reasons for the decision; and
- b) Any actions the provider proposes to take; and
- c) Any appeal procedure the provider has in place.

3. Provider Compliance

A provider is not in breach of this Code if the provider has taken reasonable actions in the circumstances to give effect to the rights, and comply with the duties, in this Code.

The onus is on the provider to prove it took reasonable actions.

For the purposes of this clause, "the circumstances" means all the relevant circumstances, including the consumer's clinical circumstances and the provider's resource constraints.

4. Definitions

In this Code,

"Advance directive" means a written or oral directive-

- (a) By which a consumer makes a choice about a possible future health care procedure; and
- (b) That is intended to be effective only when he or she is not competent:

"Choice" means a decision-

- (a) To receive services:
- (b) To refuse services:
- (c) To withdraw consent to services:

"Consumer" means a health consumer or a disability services consumer; and, for the purposes of rights 5, 6, 7(1), 7(7) to 7(10), and 10, includes a person entitled to give consent on behalf of that consumer:

"Discrimination" means discrimination that is unlawful by virtue of Part II of the Human Rights Act 1993:

"Duties" includes duties and obligations corresponding to the rights in this Code

"Ethics committee" means an ethics committee -

- (a) established by, or appointed under, an enactment; or
- (b) approved by the Director-General of Health.

"Exploitation" includes any abuse of a position of trust, breach of a fiduciary duty, or exercise of undue influence:

"Optimise the quality of life" means to take a holistic view of the needs of the consumer in order to achieve the best possible outcome in the circumstances:

"Privacy" means all matters of privacy in respect of the consumer, other than matters of privacy that may be the subject of a complaint under Part VII or Part VIII of the Privacy Act 1993 or matters to which Part X of that Act relates:

"Provider" means a health care provider or disability services provider:

"Research" means health research or disability research:

"Rights" includes rights corresponding to the duties in this Code:

"Services" means health services, or disability services, or both; and includes health care procedures:

"Teaching" includes training of providers.

5. Other Enactments

Nothing in this Code shall require a provider to act in breach of any duty or obligation imposed by any enactment or prevents a provider doing an act authorised by any enactment.

6. Other Rights

An existing right is not overridden or restricted simply because the right is not included in this Code or is included only in part.



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