



11. FACT SHEET ON HUMAN RIGHTS AND DISCRIMINATION

This fact sheet deals mainly with the prohibited grounds for discrimination contained in the Human Rights Act 1993 and the exceptions to them, and how complaints of discrimination can be made. It also provides information about the Code of Health and Disability Services Consumers' Rights, and explains how complaints must be handled.

THE HUMAN RIGHTS ACT 1993

The Human Rights Act prohibits discrimination on certain grounds in the following areas of life:

- Employment
- Access to places, vehicles and services
- Provision of goods and services
- Provision of land, housing and other accommodation
- Access to schools and other educational establishments

Prohibited grounds of discrimination

It is illegal to discriminate against someone because of their:

- gender, which includes pregnancy and childbirth
- marital or family status
- religious belief or ethical belief (which means the lack of a religious belief either generally or in relation to a particular religion)
- colour, race, or ethnic or national origin
- physical or mental disability
- age
- political opinion, which includes the lack of a particular political opinion or any political opinion
- employment status, which includes being a beneficiary or receiving ACC
- sexual orientation.

These are sometimes referred to as the "prohibited grounds" of discrimination.

Exceptions

There are some exceptions to the prohibition against discrimination on the grounds listed above:

- Separate facilities for males and females can be provided for reasons of decency or modesty.
- People can be excluded from hostels or similar accommodation if the accommodation is provided for a particular

group of people, age group or religious or ethical belief.

- Educational establishments may be run for students of a particular sex, race or religious belief.
- Counselling services may be restricted to a particular sex, race, ethnic or national origin, or sexual orientation if highly personal matters are involved.
- When the nature of a skill varies according to whether it is exercised in relation to men or women, the skill may be exercised in relation to one sex only in accordance with normal practice.
- Special facilities for disabled people to gain access to any place or vehicle do not have to be provided where it would be "unreasonable" to do so.
- Access to or use of any place, educational establishment, accommodation or vehicle does not have to be provided to any disabled person if there would be a risk of harm to that person or other people. Someone whose disability requires special services or facilities to participate in education may be excluded if those services or facilities cannot reasonably be made available.

Complaints about discrimination

The Human Rights Commission has a disputes resolution process to try to resolve a complaint by mediation before sending it to their Review Tribunal.

If someone complains to the Commission about an organisation or its workers, the organisation must comply with all processes within specific time limits. These processes include:

- acknowledging the complaint to the complainant within five working days
- keeping in touch with the complainant about the progress of the complaint
- advising of any appeal procedures the organisation has in place
- forwarding to the Commissioner's office any complaint the organisation receives that is addressed directly to the Commissioner.

- The Human Rights Commission has leaflets about protection from discrimination, making and managing a complaint, and resolving disputes. These are available from its website www.hrc.co.nz.

Sexual harassment

The Human Rights Act protects people from sexual harassment in a number of areas of life – this includes job applicants, employees and volunteers.

A person who has been sexually harassed can make a complaint to the Human Rights Commission (see above). If the person harassed is an employee, they have the option of taking a personal grievance under the Employment Relations Act 2000 (see *Fact sheet 9 – People: Volunteers, employees and contractors*) instead of complaining to the Commission – they cannot do both.

CODE OF HEALTH AND DISABILITY SERVICES CONSUMERS' RIGHTS

Providers of health and disability services are subject to the Code of Health and Disability Services Consumers' Rights.

- "Health services" promote and protect health and prevent ill health. They include counselling, contraception and fertility services.
- "Disability services" include goods, services and facilities provided to people with disabilities for, or incidental to, their care or support or to promote their independence.

Consumers' rights under the code

Consumers have rights under the Health and Disability Services Consumers' Code, including:

- to be treated with respect
- to be free from discrimination, coercion, harassment, or financial or other exploitation
- to have services provided in a way that respects the dignity and independence of the individual
- to be provided with services of an appropriate standard
- to be provided with effective communication
- to be fully informed
- to be able to make an informed choice and

give informed consent

- to have one or more support people of their choice (there are some exceptions)
- to have these rights apply when taking part in teaching or research
- to be able to complain about a provider.

Complaints about a health and disability service

A consumer may complain directly to a service, to the Health and Disability Commissioner or to a consumer advocate about a breach of the code.

Each organisation's complaints handling procedure must be fair, simple, speedy and efficient. The organisation must:

- keep in touch with the complainant
- write to the complainant within five working days and confirm that it has received the complaint
- decide within 10 working days whether to accept the complaint
- set a timeline for managing the complaint if the complaint is accepted
- keep the complainant up-to-date (at least monthly) with the handling of the complaint
- advise the complainant of any appeal procedures.

If the Health and Disability Commissioner receives a complaint about an organisation's services and recommends steps to the organisation to deal with the complaint, the organisation must take those steps and inform the Commissioner of the steps it has taken.

The Commissioner may forward a serious complaint to the Human Rights Review Tribunal, which can award a remedy, including damages, against the provider.

RESOURCES

Fact sheets

Fact sheet 9 – *People: Volunteers, employees and contractors*

Websites

www.hrc.co.nz

The Human Rights Commission has information

on making and managing a complaint about human rights and how to resolve disputes.

www.hdc.org.nz

The Health and Disability Commissioner's website has information on the Code of Health and Disability Services Consumers' Rights. Leaflets and a copy of the code can be downloaded from the website.

www.neon.org.nz

The National Equal Opportunities Network has information about sexual harassment.

NOTES

