



Health & Disability Commission

5<sup>th</sup> August 2024

**RE: Code of Health and Disability Services Consumer Rights**

Tēnā koutou

Thank you for the opportunity to provide feedback on the proposed changes to the Code of Health and Disability Services Consumer Rights. This feedback comes from STIR: Stop Institutional Racism, a group of senior public health practitioners and activist scholars committed to ending institutional racism. For more information about our rōpū visit <https://www.stirnz.org/>

Firstly, congratulations on undertaking what appears to be a comprehensive engagement process that includes engagement with important Māori leaders in this space. The Code of Health and Disability Service Consumer Rights (the Code) is incredibly important within the health sector. For too long, it has privileged Western individual notions of ethics and human rights and been silent in relation to collective Indigenous rights and tikanga.

We welcome the review and appreciate the in-depth analysis provided in the consultation documents and the thoughtful prompting questions. That said, for a community group such as STIR to respond to the intellectual work in your document is a significant ask and commitment of our scarce resources. We have been encouraging our 1000+ Associates to write submissions and are grateful for the extension that has allowed us to submit.

We appreciate you being explicit and transparent in your goals to strengthen the Code for Māori and tāngata whaikaha, the commitment to integrate tikanga and consideration of equitable access and outcomes. We appreciated your detailed glossary and links to related documents. We enjoyed reading about the whakapapa of the Code and welcome the inclusion of gender-inclusive language going forward. We welcome consideration that retaliation might occur against consumers when they complain about a provider.

Te Tiriti o Waitangi - the authoritative Māori text is different from the Treaty of Waitangi (the English version). To use them interchangeably in your consultation document fuels Crown misinformation about Te Tiriti (O'Sullivan, Came, McCreanor, & Kidd, 2021). The international legal doctrine of contra proferentem is clear that the Māori text is the authoritative text (Mutu, 2010). This has been reinforced by the Waitangi Tribunal (2014) when they found that Ngāpuhi, thereby Māori, did not cede their sovereignty. Māori scholars such as Mason Durie and Moana Jackson have always argued that Māori care much more about the Māori text than the English version or, indeed, the problematic treaty principles. STIR encourages you to hold the line in

centring the Māori text. It is important to clarify that Article One of Te Tiriti did not grant the Crown the right to govern all New Zealanders; rather, it granted the right to govern non-Māori. The inclusion of this statement in your consultation document is misleading (Mutu, 2010).

Thanks for using Critical Tiriti Analysis in your development work for the new Code (Came, O'Sullivan, & McCreanor, 2020; Came, O'Sullivan, Kidd, & McCreanor, 2023). Beyond the technical problems outlined above, it is pleasing to see the depth of your thinking around Te Tiriti application despite not having the enabler of Te Tiriti being written into your legislation. We support all your inclusions and encourage you to keep thinking about how to further embed Te Tiriti into the strategic documents, policy, legislation and praxis of the Health and Disability Commission.

We were interested to learn about the incorporation of hohou te rongo and hui ā-whānau into your kaupapa Māori dispute and conflict resolution processes. We believe your framing of complaints investigation and resolution as potentially healing, learning and improving for organisations and individuals is refreshing, pragmatic and useful. We suggest including a flow chart of options when making a complaint might be useful. Acknowledging the importance of culture and the impact of trauma will likely be a game-changer in the effectiveness of your mahi.

We note your inclusion of the Convention on the Rights of Disabled People (United Nations, 2006) and encourage you to also include the Declaration on the Rights of Indigenous Peoples (United Nations, 2007).

We note your emphasis on the importance of fair, simple, speedy and efficient complaint resolution processes. While aligned, we also encourage committing to a process that includes tika, pono and aroha. We welcome your inclusion of mana into the code (and your other proposed amendments) but would like to see a much deeper consideration of tikanga. One word is not enough to centre and normalise Māori worldviews. Please go further.

The weakness of the current (soon to be former) code is the emphasis on Western constructs of individual human rights and ethics. The limitations of this have resulted in an inability to respond effectively to systemic breaches of the code, as experienced in the Cartwright Inquiry. Taking into account the lessons from this failure, the evolution of the Code should see a clear shift to one that includes collective Indigenous rights and tikanga. This would give it the depth to navigate the complexity of addressing both systemic and individual breaches. To make this shift, bolder amendments than the ones in your consultation draft are required.

We encourage you to broaden and deepen your thinking regarding health and wellbeing. For example, a Code that had the ability to account for impacts on the environment would be a leading light in the Health sector. For Indigenous Peoples, the health of the planet is inextricably linked to the health of individuals and whānau, and therefore, such an inclusion would be a significant step in moving beyond the limitations of the Western individual paradigm as discussed.

Thanks again for the opportunity to consider the new Code. We wish you all the best in navigating it to sign-off and implementation. From the side-lines we ask, please go further. New Zealand could once again be leading the world with this Code.

Ngā mihi



Heather Came MNZM

For STIR: Stop Institutional Racism

### References

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