

## Policy and legislation

A basic knowledge of relevant policy and legislation will help you to prepare and implement any advocacy plan.

The New Zealand Legislation website [www.legislation.govt.nz](http://www.legislation.govt.nz) provides free public access to unofficial versions of New Zealand statutes (Public, Local, and Private Acts) and statutory regulations.

## New Zealand Disability Strategy

The New Zealand Disability Strategy is the Government's blueprint for recognising that disabled people have the same rights as all other citizens. *The strategy contains the following objectives:*

- **Objective 1:** Encourage and educate for a non-disabling society
- **Objective 2:** Ensure rights for disabled people
- **Objective 3:** Provide the best education for disabled people
- **Objective 4:** Provide opportunities in employment and economic development for disabled people
- **Objective 5:** Foster leadership by disabled people
- **Objective 6:** Foster an aware and responsive public service.
- **Objective 7:** Create long-term support systems centred on the individual
- **Objective 8:** Support quality living in the community for disabled people
- **Objective 9:** Support lifestyle choices, recreation and culture for disabled people
- **Objective 10:** Collect and use relevant information about disabled people and disability issues
- **Objective 11:** Promote participation of disabled Maori
- **Objective 12:** Promote participation of disabled Pacific peoples
- **Objective 13:** Enable disabled children and youth to lead full and active lives
- **Objective 14:** Promote participation of disabled women in order to improve their quality of life
- **Objective 15:** Value families, whanau and people providing ongoing support

All government departments are required to develop annual Disability Strategy implementation work plans and the Minister for Disability Issues is required to report annually to Parliament on progress in implementing the Strategy.

## International law

New Zealand has signed and ratified a number of international human rights treaties and conventions that place obligations on our Government.

- Universal Declaration of Human Rights (1948)
- United Nations Convention on the Rights of the Child (UNCROC) (1989)
- United Nations Convention on the Rights of Persons with Disabilities (2007)

## New Zealand law

- Human Rights Act 1993 (and amendments)
- New Zealand Bill of Rights Act 1990
- Privacy Act 1993
- Official Information Act 1982
- Education Act 1989
- Protection of Personal and Property Rights Act 1988
- Children, Young Persons and their Families Act 1989
- Care of Children Act 2004
- Employment Relations Act 2000
- Health and Disability Commissioner Act 1994
- The Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996

## Education

All state schools, integrated schools and private schools have obligations to pupils and families under legislation, government policies and strategies and international law.

*The Education Act 1989 provides for:*

- free education in any state school from age five until the end of the year in which the student turns 19
- special education from age five until the end of the year in which the student turns 21
- the same rights to enrol and receive education for students who have special educational needs

The New Zealand Curriculum Framework sets out overall policy direction for the school curriculum. It describes the seven essential learning areas, eight sets of essential skills and commonly held attitudes and values that should be developed and reinforced through the school curriculum.

*Under the National Education Goals and National Administrative Guidelines, Boards of Trustees of state and integrated schools are required to:*

- help all students realise their full potential
- provide appropriate learning programmes and safe learning environments
- identify and remove barriers to learning and achievement
- show success in learning and identifying individual needs and receive appropriate support
- respect cultural differences
- comply with all legislation relating to the education of students (eg attendance, safety, achievement)

The special education policy framework, called Special Education 2000, was introduced to improve educational opportunities and results for children and young people with special educational needs. It aims for clear, consistent and predictable allocation of resources. These resources are to be allocated fairly, irrespective of school setting or geographic location.

Special Education Policy Guidelines affirm the right of every student to learn in accordance with the principles and values of the Education Act and National Education Guidelines.

*Students with special education needs:*

- have the same rights, freedoms and responsibilities as other students of the same age
- have access to a fair share of available special education resources. These resources are to be used in the most effective and efficient way
- have the right to seamless education from the time their needs are identified through to after-school options
- have the right for their individual learning and development needs to be met

A positive partnership between parents and the education provider is essential and parents should be consulted in the use of resources.

*The following rules apply in the case of stand downs and exclusions:*

- the stand-down period is up to five school days in any term and no more than 10 school days in a year
- stood-down or suspended students may attend school in certain circumstances and must be provided with appropriate guidance or counselling
- students have the right to speak and be represented at suspension meetings
- suspended students are to be provided with an educational programme
- Boards of Trustees can extend suspensions with conditions aimed at bringing the student back to school
- Boards may exclude students from their school
- Principals have 10 school days in which to find another school for an excluded student and if they haven't must inform the Ministry of Education

There is a clearly defined process for stand downs, suspensions and exclusions which must be adhered to. Further information and guidelines are available on the Ministry of Education website [www.minedu.govt.nz](http://www.minedu.govt.nz)

## Guardianship

If you become involved in an advocacy situation involving guardianship, remember to check who has legal guardianship. Guardianship does not 'roll over' and any adult guardianship will be covered by Family Court orders and will be time limited. Family Court orders must be applied for. They are not granted automatically.

For children up to the age of 18 provisions within the Care of Children Act 2004 and the Children, Young Persons and Their Families Act 1989 apply.

Parent's guardianship for young people automatically ends at 18. This does not mean that families cannot be involved in decision making. In some circumstances guardianship may be extended beyond age 18.

Guardianship for those over the age of 18 who due to disability, age or illness are not fully able to manage their own affairs, is covered by the Protection of Personal and Property Rights Act 1988 (3PR).

*Welfare guardianship under the 3PR Act does NOT allow the guardian to make and implement decisions about the following things:*

- getting engaged, married, separated, divorced
- having a child adopted
- refusing consent for standard medical treatment or procedures
- some very serious medical matters which could affect the person's life
- whether or not a person should have special treatment for mental illness

## Enduring and ordinary powers of attorney

Giving a person an enduring power of attorney means giving a person the authority to act on your behalf in either all or part of your affairs, but only during such times when you are unable to make decisions for yourself.

Enduring power of attorney is very different from ordinary power of attorney. Enduring power of attorney is governed by the Protection of Personal and Property Rights 1988, and requires the person in the first instance to have the capacity to pass authority to act to another person. The authority to act cannot be used unless the person giving the authority ceases to have the capacity to act themselves.

On the other hand, ordinary power of attorney is not governed by legislation and simply means allowing someone to act on your behalf on a particular matter.

Enduring power of attorney is commonly misused in situations involving disability. Often the question of the need to address issues around decision-making is because of the disability, but enduring power of attorney requires the person to be fully capable of giving the authority to act to another person should they become incapacitated in the future. For this reason enduring power of attorney is sometimes not the most useful mechanism for people with disabilities to use. In such situations, a personal order, the appointment of a welfare guardian or property manager is often more appropriate.

## Privacy

The Privacy Act 1993 governs how individuals, organisations and businesses collect, use, disclose, store and give access to personal information.

The core of the Act is the 12 information privacy principles. These give individuals important rights to control what is done with information about them.

However, the principles have some exceptions. The Act balances privacy needs with other important social needs, such as public safety or prevention or detection of crime.

*Personal information must not be disclosed unless the agency reasonably believes that:*

- the disclosure is in connection with, or directly related to, one of the purposes for which it was obtained
- the agency got the information from a publicly available publication
- disclosure is to the individual concerned
- disclosure is authorised by the individual concerned
- it is necessary for a public sector agency to disclose the information to uphold or enforce the law, protect the tax base, or assist court or tribunal proceedings
- disclosure is necessary to prevent or lessen a serious and imminent threat to public health or safety, or the life or health of any individual
- disclosure is necessary to facilitate the sale of a business as a going concern
- the information is to be used in a form in which the individual concerned is not identified
- disclosure has been authorised by the Privacy Commissioner under section 54

The Health and Information Privacy Code 1994 is issued under provisions contained in the Privacy Act 1993, and sets specific rules for agencies in the health sector to better ensure the protection of individual privacy. The Code addresses health information collected, used, held and disclosed by health agencies. For the health sector the code takes the place of the information privacy principles outlined in the Privacy Act 1993.

## Discrimination

Section 21 of the Human Rights Act 1993 prohibits discrimination on the grounds of: sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status, sexual orientation.

The Human Rights Act 1993, also makes it unlawful to discriminate in the following areas: provision of goods and services, access to facilities and places, education, employment, housing and accommodation. The complaints process is administered by the Human Rights Commission.

## Health and disability services

All health and disability providers in New Zealand are required to comply with the Code of Health and Disability Consumers' Rights. The Code of Rights is contained in the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 which are set up under the Health and Disability Commissioner Act 1994.

*The rights under the Code are as follows:*

- **Right 1:** the right to be treated with respect
- **Right 2:** the right to freedom from discrimination, coercion, harassment, and exploitation
- **Right 3:** the right to dignity and independence
- **Right 4:** the right to services of an appropriate standard
- **Right 5:** the right to effective communication
- **Right 6:** the right to be fully informed
- **Right 7:** the right to make an informed choice and give informed consent
- **Right 8:** the right to support
- **Right 9:** rights in respect of teaching or research
- **Right 10:** the right to complain

The Code of Rights covers all health and disability services, this includes public and private services, paid and unpaid services. A free Health and Disability Advocacy Service is available throughout New Zealand to help people resolve complaints made against providers.

The complaint mechanisms under the Health and Disability Commissioner Act 1994 have become the primary vehicle for dealing with complaints about the quality of health care and disability services in New Zealand. It is important to be familiar with rights under the Code because complaints can only be upheld if it can be shown that the provider has breached the Code.

