

CODE OF HEALTH AND COMMUNITY RIGHTS AND RESPONSIBILITIES

INTRODUCTION TO THE COMMISSION

The Health and Community Services Complaints Commission came into operation on 1 July 1998, under the *Health and Community Services Complaints Act* 1998. The Commission's role is to receive and respond to complaints about the delivery of health and community services in the Northern Territory. The overall aim of the Commission is to improve the delivery of health and community services.

Health and community service providers are defined within the legislation to include anyone providing or claiming to provide any sort of health, aged care or disability service, whether public or private. The definition is very broad. For example, health service providers are not only hospitals, doctors, nurses and Aboriginal health workers, but include health professionals, such as physiotherapists and dental practitioners and alternative health providers such as homeopaths and naturopaths. A provider may be an employer, an employee or a volunteer. A user is a person who seeks, uses or receives a health or a community service.

A more detailed explanation of the services covered by the Act can be found in the *Health and Community Services Complaints Regulations*.

INTRODUCTION TO THE CODE

The Code confers a number of rights and responsibilities on all users and providers of health and community services in the Northern Territory

The rights and responsibilities set out in the Code are not absolute. The obligation imposed on users and providers is to take reasonable action in all circumstances to give effect to the Code

When a complaint is made, the Commission will consider the reasonableness of the action taken by the provider, in light of the circumstances. The circumstances in a particular case may include the user's state of health or well-being and any resource constraints operating at the time.

The Code does not override duties which are set out in Territory or Commonwealth legislation.

Principle 1: Standards of Service

1. Users have a right to:
 - a) timely access to care and treatment which is provided with reasonable skill and care¹;
 - b) care and treatment which maintains their personal privacy and dignity;
 - c) care and treatment free from intimidation, coercion, harassment, exploitation, abuse or assault;
 - d) care and treatment that takes into account their cultural or ethnic background;
 - e) providers who seek assistance and information on matters outside their area of expertise or qualification;
 - f) services provided in accordance with ethical and professional standards, and relevant legislation;

¹ Reasonable skill and care refers to the generally accepted standard of health or community service delivery.

- g) services which are physically accessible and appropriate to the needs arising from an impairment or disability; and
- h) services provided without discrimination, as set out in relevant Territory and Commonwealth legislation.

Principle 2: Communication and the Provision of Information

1. Providers have a responsibility to:
 - a) provide accurate and up to date information responsive to the user's needs and concerns, which promotes health and well-being;
 - b) explain the user's care, treatment and condition in a culturally sensitive manner, and in a language and format they can understand. This includes the responsibility to make all reasonable efforts to access a trained interpreter;
 - c) answer questions honestly and accurately;
 - d) provide information about other services, and as appropriate, how to access these services;
 - e) provide prompt and appropriate referrals to other services, including referral for the purpose of seeking a second opinion; and
 - f) provide the user with a written version or summary of information, if requested.
3. Users have a responsibility, to the best of their ability, to:
 - a) provide accurate and timely information, about their past care and treatment and issues affecting their condition; and

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- b) inform the provider of issues that might interfere with participation in care or treatment recommended by the provider.

Principle 3: Decision Making

1. Subject to any legal duties imposed on providers, users have a right to:
 - a) make informed choices and give informed consent to care and treatment;
 - b) seek a second opinion;
 - c) refuse care and treatment, against the advice of the provider;
 - d) withdraw their consent to care and treatment, which includes the right to discontinue treatment at any time, against the advice of a provider;
 - e) make an informed decision about body parts or substances removed or obtained during a health procedure. This includes the right to consent or refuse consent to the storage, preservation or use of these body parts or substances; and
2. In non-emergency situations, providers have a responsibility to seek informed consent from users before providing care and treatment by:
 - a) seeking consent specific to the care and treatment proposed, rather than a generalised consent;
 - b) discussing the material risks, complications or outcomes associated with each care or treatment option;
 - c) ensuring the user understands the material risks, complications or outcomes of choosing or refusing a care or treatment option;

- d) where relevant, explaining the legal duties imposed on providers which prevent users from refusing a type of care or treatment, such as those imposed by the Mental Health and Related Services Act and the Notifiable Diseases Act;
 - e) providing users with appropriate opportunities to consider their options before making a decision;
 - f) informing users they can change their decision if they wish;
 - g) accepting the user's decision; and
 - h) documenting the user's consent, including the issues discussed and the information provided to the user in reaching this decision.
3. Providers have a right to treat without the user's consent where:
 - a) treatment is provided in a life threatening emergency or to remove the threat of permanent disability and it is impossible to obtain the consent of the user or the user's personal representative; or
 - b) treatment is authorised or required under Territory or Commonwealth legislation.
4. Where a provider reasonably considers that a user has diminished capacity to consent, the user still has a right to give informed consent to a level appropriate to their capacity.
5. Where a provider considers a user lacks the capacity to give informed consent, a provider must, except under specific legal circumstances, seek consent from a person who has obtained that legal capacity under the Adult Guardianship Act or other relevant legislation.

Principle 4: Personal Information

1. Users have a right to information about their health, care and treatment. However, they do not have an automatic right of access to their care or treatment records.
2. Providers may prevent users from accessing their records where:
 - (a) legislative provisions restrict the right to access information; or
 - (b) the provider has reasonable grounds to consider access to the information would be prejudicial to the user's physical or mental health.
3. Providers have a responsibility to protect the confidentiality and privacy of users by:
 - (a) ensuring that the user's information held by them is not made available to a third party unless:
 - the user gives written authorisation for the release;
 - subject to subpoena or pursuant to legislation; or
 - it is essential to the provision of good care and treatment and the provider obtains the user's consent. This may take the form of consent to share information between a treating team.
 - (b) providing appropriate surroundings to enable confidential consultations and discussions to take place;
 - (c) having policies and procedures in place, including policies relating to the storage of information, and ensuring all staff are aware of these;
 - (d) communicating with the user and other providers involved in their care and

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treatment in an appropriate manner and environment.

Principle 5: The Relationship between User and Provider

1. Both users and providers have a responsibility to treat each other with respect and consideration.
2. Providers have a responsibility to:
 - a) make clear the standards of behaviour and language acceptable in the relationship between user and provider;
 - b) make clear the circumstances under which they will restrict or withdraw the services they provide;
 - c) advise users if and why they are unable to provide a service the user has requested; and
 - d) subject to those responsibilities regarding emergency treatment, remove, or seek the removal of any person whose behaviour is considered dangerous to the provider or service users.
3. Users have a responsibility to ensure they do not endanger or deliberately put the safety of the provider or other service users at risk.

This responsibility is extended to the user's family members, friends, carers and advocates in their interactions with the provider.
4. Providers have a right to be able to provide care and treatment free from intimidation, coercion, harassment, exploitation, abuse and assault.

Principle 6: Involvement of Family, Friends, Carers and Advocates

1. Users have a right to:
 - a) involve their family, friends, carer or advocate in their care and treatment;
 - b) withhold information from family members, friends and carers on their care and treatment, or request the provider do so;
 - c) seek help from an advocate if required.
2. Providers have a responsibility to:
 - (a) respect the role family members, friends, carers and advocates may have in the user's care and treatment, and the user's right to withhold information from them; and
 - (b) recognise the carer's knowledge of the user and of the impact care and treatment options may have on the user's health and well-being.

Principle 7: Research, Experiments and Teaching Exercises

1. Providers have a responsibility to:
 - a) inform users if the care or treatment offered to them is experimental or part of a teaching or research exercise, of its functions and aims, and of their avenues for complaint;
 - b) inform users they can withdraw from the research, experiment or teaching exercise at any stage; and
 - c) accept the user's refusal to take part in research, experiments and teaching exercises.

Principle 8: Complaints and Feedback

1. Providers have a responsibility to:
 - a) provide a mechanism for users to give feedback or make complaints about their care and treatment;
 - b) inform users of the complaint process and of how to make a complaint;
 - c) ensure that complaints are dealt with in an open, fair, effective and prompt manner, and without reprisal or penalty; and
 - d) provide users with information about external complaint resolution mechanisms and advocates.
2. Users and providers have a responsibility to be fair, truthful and accurate when making or responding to a complaint.

CONTACTING THE COMMISSION

Service users who believe their rights have been breached are encouraged to talk or write to the person or organisation who has provided the service. Complaints may also be made directly to the Commission.

The Commission can be contacted at

The Health and Community
Services Complaints Commission
GPO Box 1344
DARWIN NT 0810

Facsimile: (08) 8999 1828

Free call: 1800 806 380.

Information on the Commission and the services it provides is available on our website at www.omb-hcsc.nt.gov.au