



Your human rights and making complaints

A guide for disabled people and their families



Human Rights
Commission
Te Kāhui Tika Tangata

Contact the Commission

Human Rights Commission InfoLine

0800 496 877 (toll free)
Fax 09 377 3593 (attn: InfoLine)
Email infoline@hrc.co.nz
www.hrc.co.nz

Language Line and New Zealand
Sign Language interpreter available.

If you have a hearing or speech
impairment, you can contact the
Commission using the New Zealand
Relay Service. NZ Relay is a
telecommunications service and all
calls are confidential.
www.nzrelay.co.nz

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Names and details have been changed to protect people's privacy in the case studies published in this booklet.

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Being treated unfairly? Call the Human Rights Commission.



What are human rights?

Everyone has human rights. These are the rights to be treated fairly and equally, with respect and dignity. Human rights are also about how a government should treat its people. These rights make sure all people can:

- 1 be safe and protected from harm
- 2 make their own decisions
- 3 have a good life
- 4 be involved in their community and society.

What if my rights aren't being respected?

You can do something if you feel you've been treated differently (discriminated against) because you're living with a disability. This guide provides information on how you can make a complaint to the Human Rights Commission and what will happen if you do. It also provides guidance on making complaints generally and information on other complaint agencies that might be able to help.

How are my rights protected?

Your human rights are promoted and protected by New Zealand law and through international agreements. The rights of disabled people are outlined in the United Nations Convention on the Rights of Persons with Disabilities (also known as the Disability Convention), the Human Rights Act and other Acts of Parliament.

The Disability Convention

The Disability Convention makes the rights of disabled people clear

so disabled people can enjoy the same rights as everyone else. The Disability Convention says that people with disabilities include “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

The New Zealand Government has agreed to implement (make happen) the Disability Convention.

Jenny misses out on school camp

Jenny has an intellectual disability. Her school decided she couldn't attend a school camp as it felt her behaviour posed a potential health and safety risk. They believed Jenny needed one-to-one attention.

Jenny's parents were unhappy, believing the school should have discussed these concerns. They complained to the Human Rights Commission.

During the mediation, the school and Jenny's parents sorted out their differences and acknowledged where things had gone wrong. They agreed that they could have come up with solutions together, for example one of Jenny's parents could have attended the camp.

Although Jenny didn't attend that camp, processes were put in place to deal with the lack of notice, consultation and communication by the school in its decision to exclude Jenny. The school also agreed to review their policy on risk analysis for Education Outside the Classroom.

The Human Rights Act

If you're treated unfairly because of your disability this may be unlawful discrimination.

The Human Rights Act can protect you from discrimination in these areas:

- 1 government or public sector activities
- 2 employment
- 3 business partnerships
- 4 education
- 5 public places, vehicles and facilities
- 6 goods and services
- 7 land, housing and accommodation
- 8 industrial and professional associations, qualifying bodies and vocational training bodies.



Disability includes physical, psychiatric, intellectual or psychological disability or illness. This includes mental health conditions.

The Human Rights Act also makes it unlawful to be discriminated against because of:

- sex (including gender identity)
- marital status
- religious belief
- ethical belief
- colour, race, or ethnic or national origins
- age – if you're 16 years or over
- political opinion
- employment status
- family status
- sexual orientation.

It also protects you from sexual and racial harassment.

Agency fixes access for disabled clients

Hannah, a wheelchair user, visited the local branch of an agency to find there was no longer a wheelchair accessible counter where she could be seen or write out forms. She complained to the Commission.

The Commission contacted the agency and it agreed to mediation. The agency was keen to meet with Hannah and find out how it might best respond within its means. A second meeting was held. Hannah found out more about the agency's broader work and approach to disability issues.

The agency agreed to review and modify the reception to accommodate disabled clients. It installed a lower reception desk in the office that Hannah had visited. It also installed accessible counters in its new branch offices.

Hannah learnt about the current disability training for the agency's staff and was invited to make any suggestions or comments for improving that training. She received an apology and a payment to acknowledge the humiliation and stress she had experienced.

Disability discrimination can be direct or indirect. For example, it is direct discrimination if a person who has a leg brace is told they can't have a receptionist job because the organisation doesn't employ people with a visible disability on reception.

Indirect discrimination is when an action or policy that appears to treat everyone the same has the effect of discriminating against someone. For example, if the only entrance to a shop is by climbing stairs, this indirectly discriminates against an older person who uses a walking stick and is unable to climb the stairs to the shop.

Discrimination applies if:

- 1 you have a disability, or
- 2 you had a disability in the past, or
- 3 there is an assumption you have a disability.

It is also unlawful to discriminate against relatives or friends of people with a disability because of that disability. For example, if a restaurant allows a family with a child who has cerebral palsy to drink in their garden

bar but not in their family room, the family with the disabled child aren't being given the same choices that other families have.

What does the Human Rights Commission do?

The Human Rights Commission promotes, protects and monitors the human rights of all people living in New Zealand. It is a Crown entity, but it is independent of the Government.

Improving the rights of disabled people is an important focus of the Commission's work. The Commissioner with responsibility for disability rights works to identify areas where disabled people are vulnerable to abuse or where their rights are denied, and advocates for solutions.

What can I contact the Commission about?

If your rights are being ignored, or you believe you're being treated differently because you have a disability (or on any of the other grounds in the Human Rights Act), you can contact us to:

- 1 tell us about an issue or concern and have it recorded
 - 2 talk through a concern and different ways it can be sorted out
 - 3 get information and advice on your rights
 - 4 make a complaint if you feel you have experienced discrimination or harassment.
- You can contact us if you're a family member or friend who wants to make a complaint on behalf of someone else, as long as you have the person's permission. You can also make a complaint on behalf of a group of people.

Bouncer misunderstanding

Mike is a young man who has cerebral palsy and autism. His cerebral palsy means his speech is slightly slurred.

When visiting a night club with friends a bouncer told him he wouldn't be allowed in, as he was drunk. Mike explained he wasn't drunk but that he had cerebral palsy and autism. The bouncer yelled out to another person on the door, "he reckons he's got cerebral palsy and autism." He was then allowed in.

Mike was embarrassed by the bouncer's actions. Although he'd eventually been given access to the club, he wanted to be sure it wouldn't happen again, to him or others in the same situation. Mike contacted the Commission who contacted the security firm. The firm agreed to attend mediation.

The security firm apologised to Mike during mediation for any embarrassment their staff had caused him. They assured him there had been no intention to discriminate against him. They explained the bouncers call out to each other using a number code when a patron comes in drunk or dressed inappropriately. They said they might adopt the same system for people with disabilities when the disability gives the appearance of being drunk.

Mike was happy with this outcome.

You're protected if you complain or support another person to make a complaint. You can't get into trouble or be treated unfairly because you have made a complaint or supported another person in making a complaint.

Something's happened I'm not happy with. What should I do?

It is your right to make a complaint and be given a response. Making a complaint brings your issue or concern to someone's attention, so that the issue can be sorted out.

It can be a difficult thing to do, especially if you're not sure of the best way to get your point across.

The following suggestions may be helpful.



Before making the complaint:

- 1 Talk about the issue with someone you trust. This can help you with the next suggestion.
- 2 Identify and be clear on what the complaint is about.
- 3 Take notes about the main points of what happened.

No room for guide dog

Stephen is a guide dog user. He booked accommodation for a short getaway and took his guide dog, Jessie.

After a day out, they arrived back to find Jessie's bed and bowls outside. The owner told Stephen Jessie couldn't stay in the room. There was a boarding kennel next door they could use. Stephen said he was reliant on Jessie. Despite Stephen's explanation about the rights in relation to the use of guide dogs, the owner refused to allow Jessie inside.

Stephen complained to the Commission about discrimination in accessing services and accommodation. Mediation didn't sort out the situation so Stephen took his case to the Human Rights Review Tribunal and asked the Director of Human Rights Proceedings to represent him.

The Director provided Stephen with legal representation to take his case to the Human Rights Review Tribunal. At the Tribunal, the owner claimed a respiratory (breathing) condition allowed him to discriminate against Stephen, because contact with dogs made his condition worse.

An agreement was reached to settle the case. The owner admitted he had discriminated against Stephen because of his disability, and that his medical condition wasn't severe enough to justify this. He sent Stephen a written apology and agreed to pay \$8000 for emotional harm.

Stephen was happy with the result and donated \$5000 of the payment to the Royal New Zealand Foundation of the Blind's Guide Dog Services.

4 Think about why you're unhappy, and what would sort it out for you.

5 Consider what support you might need.

It can be useful to have someone support you with making a complaint. For example, they can help you put your complaint in writing or attend meetings with you.

A friend, family or whānau member, or an advocate can act as a support person.

Who should I make my complaint to?

If you can, talk to the person you're unhappy with first. Sometimes this will sort out the problem. Go to the person's manager or supervisor if you're uncomfortable talking to the person directly or are unhappy with their response. If your complaint is with an organisation or a service provider, ask for a copy of their complaints procedure before you make your complaint. This will tell you who to contact and how to make a complaint.

What should I put in my complaint?

It is a good idea to make a complaint as soon as a problem arises. Complaints can be made in writing (letter or email), in person, or by telephone.

When making a complaint:

- 1 state clearly that you're making a complaint
- 2 provide your name and contact details

- 3 include the facts of what happened, when it happened, and why you're unhappy
- 4 provide copies of relevant documents
- 5 tell them how you'd like it sorted out. Is it an apology? Do you want them to do something? Being clear and realistic about possible solutions will give them a better chance of sorting out the complaint.

What else should I do?

If you're making your complaint in person or by telephone, write down the name of the person you speak to, the date and time of the conversation, and a brief summary of what they said. Ask the person who takes your complaint to confirm in writing that they have received it and when you should expect a response.

If you're emailing or posting your complaint, keep a copy and record the date you sent it.

What if I want to make a complaint to the Human Rights Commission?

Contact the Human Rights Commission:

- 1 phone: 0800 496 877
- 2 email: infoline@hrc.co.nz
- 3 fax: 09 377 3593 (write in subject "Attention: InfoLine")
- 4 complete the online complaint form on our website: www.hrc.co.nz
- 5 if you're Deaf, or have a hearing or speech impairment, you can contact the Commission using the New Zealand Relay Service at www.nzrelay.co.nz
- 6 Language Line, an interpreting service, is available
- 7 New Zealand Sign Language interpreters are available on request
- 8 it's free to contact the Commission and you don't need a lawyer. Your enquiry or complaint is confidential
- 9 the Commission has staff with disability rights expertise who

can assist you in bringing your complaint to the Commission.

What happens when I complain to the Human Rights Commission?

We will:

- 1 listen to your complaint and ask questions to understand the issue better and find out what you want to have happen
- 2 discuss with you different ways to approach and sort out the issue
- 3 if we're unable to help you with your complaint, we will explain why and assist you to contact the agency best able to help.

How can the Commission help sort out my complaint?

We can sort out complaints in a number of ways, including:

- 1 providing information and advice on your rights so you can discuss and sort out the issue yourself
- 2 contacting the person involved to informally discuss your complaint
- 3 holding a mediation between you and the other people involved in the complaint.



What is mediation?

Mediation is an impartial process. This means the mediator doesn't take a side on your complaint. The mediator helps everyone to discuss the issues raised by your complaint in a fair, open and helpful way. The mediator works to help people to understand each other's point of view and the issues involved.

Mediation can include explaining the Human Rights Act and finding possible solutions. Examples of

solutions include: an apology, agreeing to train staff or take a course about an issue, or compensation for hurt feelings.

Mediation is free, flexible and confidential.

A complaint can be mediated through letters, phone calls, videoconference, or face-to-face meetings. You don't need to have contact with the other person or organisation you're complaining about.

The mediator will make sure you know what will happen and that you're comfortable with the process.

If there needs to be a meeting, the mediator will arrange it and ask you if you have any requirements so you can participate, such as an accessible venue, NZSL interpreter, language interpreter where English is a second language, or regular rest breaks. You don't need to be in the same room as the person you're complaining about.

Are complaints usually sorted out through mediation?

Complaints are usually sorted out through mediation. The end result depends on the type of complaint. The aim of mediation is to reach a solution that is acceptable to everyone involved in the complaint.

What if my complaint isn't sorted out through mediation?

If a complaint can't be sorted out through mediation, you can take your issue to the Human Rights Review Tribunal. This is an independent tribunal. The Tribunal is like a court, able to hear a

complaint and make a decision. The Tribunal can award damages (money) and order other remedies. You can apply for free legal representation from the Director of Human Rights Proceedings.

What if I'm unhappy with how the Commission dealt with my complaint?

If you're unhappy with how your complaint was handled, you should discuss it with the mediator. If you aren't happy with their response or you feel unable to speak with the mediator directly, you can raise the issue with the Commission's Chief Mediator. You also have the right to contact the Office of the Ombudsman, who can look at how the Commission handled your complaint.

Who else can I make a complaint to?

There are other agencies that may be able to help you sort out your complaint. These include:

The Health and Disability Commissioner

If you're unhappy with how a health or disability service was provided.

Free phone: 0800 11 22 33

Email: hdc@hdc.org.nz

Website: www.hdc.org.nz

Health and Disability Advocates

Health and Disability Advocates can help you with your complaint about how a health or disability service was provided.

Free phone: 0800 55 50 50

Website: <http://advocacy.hdc.org.nz/>
for a list of free advocates in your area

The Privacy Commissioner

If you believe there may be a breach of your privacy rights.

Free phone: 0800 803 909

Email: enquiries@privacy.org.nz

Website: www.privacy.org.nz

The Office of the Ombudsman

For complaints about central and local government agencies; including complaints about accident compensation, benefit payments, education, housing, and health.

Free phone: 0800 802 602

Email: info@ombudsman.parliament.nz

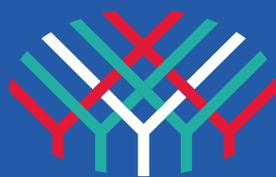
Website: www.ombudsman.parliament.nz

Each complaint agency deals with specific issues or areas. If an agency is unable to help with your complaint, they may refer you to another agency that can. If you aren't sure who to contact, discuss your problem with the Human Rights Commission's InfoLine staff, phone 0800 496 877.

The website www.complaintline.org.nz also provides information about complaints agencies.

For further information contact the Human Rights Commission.

Remember you have the right to be treated fairly and without discrimination where you work, live, study and when you use health and welfare services.



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