



Guide to the rights to healthcare and health protection in Aotearoa New Zealand



The human rights to healthcare and health protection entitle everyone to an effective health system, which covers physical and mental healthcare, public health, and the underlying determinants of health such as access to safe drinking water and healthy food. The health system must be responsive to national and local priorities and be able to be accessed by everyone.

The human rights to healthcare and health protection are tools that can help you achieve your professional objectives. There is international evidence that applying human rights concepts and frameworks help to strengthen health systems, achieve equity, reduce suffering, and save lives.¹

Te Tiriti o Waitangi and te ao Māori both closely align with human rights. Te Tiriti o Waitangi as Aotearoa New Zealand's founding document imposes obligations on health professionals to ensure equity and the highest

attainable standard of physical and mental health for tangata whenua.

Human rights do not provide magic solutions to 'wicked' problems, but they have a constructive contribution to make. Human rights are realistic. They are all about improving the everyday lives of everybody - especially the most disadvantaged - in the real world. They provide a framework which helps policymakers, dignifies individuals, and empowers communities.

¹ See further resources list for more information and further reading at www.tikatangata.org.nz/our-work/guide-to-the-rights-to-healthcare-and-health-protection



What are human rights?

Human rights embody a set of key values and principles, such as manaakitanga, kaitiakitanga, fairness, participation, decency, wellbeing, dignity, equity, freedom, autonomy, community, non-discrimination, responsibility, and accountability.

Everyone has human rights from the moment they are born, no matter who they are.

Human rights are the basic entitlements and freedoms that belong to everyone - the basic needs for a healthy, safe life that enables all of us to reach our full potential.

Some human rights are about freedom, for example, the freedom to practice a religion and have a family.

Other human rights are about establishing fair institutions, systems, processes, and practices which enable us to enjoy decent housing, nutritious food, accessible education, effective healthcare for physical and mental health issues, and evidence-based health protection.

In Aotearoa New Zealand, all human rights must be firmly grounded on the four articles of Te Tiriti o Waitangi: kāawanatanga, tino rangatiratanga, rite tahi and ngā ritenga katoa and the rights and obligation which flow from these.²

Alongside the human rights instruments which protect the universal rights to healthcare and health protection, Te Tiriti o Waitangi and the United Nations Declaration on the Rights of Indigenous Peoples affirm the rights of tangata whenua to:

- Self-determination (mana motuhake) in the design, delivery, and monitoring of primary health care for tangata whenua
- Health equity
- Well-resourced traditional health practices, medicines, and resources
- Work with the government in partnership in the governance, design, delivery, and monitoring of all health services.

² The fourth article of Te Tiriti is often referred to as the Ritenga Māori declaration.



Who is responsible for delivering human rights?

Everyone has a role to play but government has primary responsibility.

Government has the responsibility to do everything it reasonably can to make sure everyone enjoys their human rights.

Others also have human rights responsibilities, including the private sector in relation to commercial determinants of health.

Individuals have human rights responsibilities to each other and our communities.



'Idealistic'? No, realistic

Sometimes people dismiss human rights as 'idealistic', but this is based on misunderstandings.

The rights to healthcare and health protection do not make the unreasonable demand that a first-class health system be constructed overnight. Instead, for the most part, the rights require that the government takes effective steps to progressively work towards a first-class health system that

provides equitable access for all. These rights must always be improving through these steps, never getting worse.

Also, the rights to healthcare and health protection recognise that resources are limited. Even a rich country like Aotearoa New Zealand cannot avoid difficult decisions about resource allocation. But human rights place reasonable conditions on policy-making processes, for example, priority should be given to the most disadvantaged individuals and communities.



Health professionals and human rights professionals are natural allies

Both professions:

- Are motivated by similar concerns for the well-being of individuals, populations, and communities
- Want effective, integrated, responsive health services that are accessible to all
- Recognise the importance of healthcare and the social, environmental, and other determinants of health, including nutrition, housing, and education
- Grasp the importance of collective action including public and private actors, civil society, and communities.

Good human rights professionals help health professionals do their job.

And good health professionals deliver human rights for all.



Ethics, law, and accountability

Agreed by successive governments of Aotearoa New Zealand, the rights to healthcare and health protection are ethically compelling. They are also binding on Aotearoa New Zealand in international law.

These binding human rights require accountability otherwise they become empty promises. But accountability does not necessarily mean going to court. There are other forms of non-judicial – or 'constructive' – accountability.

Constructive accountability is about finding which health initiatives are working, so they can be repeated, and which are not, so they can be adjusted. It is not about blame and sanctions. It is about checking that all reasonable steps are being taken to ensure human rights obligations are honoured.

Constructive accountability requires a degree of independence from those responsible for the health initiatives.



What do the rights to healthcare and health protection contribute?

Here we signal ten illustrative features of the rights to healthcare and health protection:



Process is as important as outcome

– human rights are not only interested in what a health system does (e.g. providing access to essential medicines), but also how it does it (e.g. transparently, in a participatory manner, and without discrimination).



Access to health information is key - this enables individuals and communities to be better informed and involved.



Equity and non-discrimination - a health system must be accessible to all without discrimination, including those living in poverty, tangata whenua, ethnic minorities, disabled people, women, children, people living in rural and remote areas, rainbow communities, people in mental distress, and other disadvantaged individuals and communities. Outreach programmes must be in place to ensure that disadvantaged individuals and communities enjoy the same access as those who are more advantaged.



Participation at all stages - all individuals and communities are entitled to active and informed participation on issues relating to their health: 'Nothing about us, without us'.



Respect for cultural difference – all health initiatives must be sensitive to issues of culture and ethnicity. The health system is required to consider the needs of diverse communities including traditional methods of preventive care, healing practices and medicines. For tangata whenua this includes access to traditional rongoā and kaupapa Māori service models delivered by Māori providers.



Effective coordination – a health system depends on effective coordination across a broad range of public and private actions at the national level. This extends to policymaking and the actual delivery of services.



Affordable for everyone – there should be no financial barriers to access health services. Any payment for health services should be based on the principle of equity, ensuring that these services, whether public or private, are affordable for all. Equity means that poorer households should not be disproportionately impacted with health expenses as compared to richer households.



A holistic approach which includes the underlying determinants of health

– human rights encompass timely and appropriate medical care, and the underlying determinants of health, such as adequate water and sanitation and safe and nutritious food. Also, social determinants such as poverty, gender and discrimination impact health outcomes and require careful and close attention. Commercial determinants of health (e.g. alcohol, gambling, tobacco, and fossil fuel) also require careful consideration.



Good quality – this includes safe essential medicines, skilled medical professionals, and safe hospital equipment. Quality also extends to the way patients and others are treated – with respect.



Prioritisation and striking fair and reasonable balances – few human rights are absolute. This means balances must be struck between competing rights, for example, freedom of information and the right to privacy. Also, there are often legitimate but competing claims in relation to the same human right e.g. the right to healthcare requires a number of different resource intensive components. Managing a health system entails difficult decisions of prioritisation. Human rights assist by requiring this prioritisation to be done in a fair, transparent and participatory process, considering the wellbeing of the most vulnerable and not just the claims of powerful interest groups. Constructive accountability mechanisms ensure that fair and reasonable balances are struck.



➤ A way forward

Using a human rights-based approach to policy making which considers the above key features is vital to ensure the rights to healthcare and healthcare protection for all.

As already discussed, the rights to healthcare and health protection are subject to progressive realisation and resource availability. However, there are some features of these human rights that are so important they must be addressed immediately. These are called core obligations. For example, the obligations of the government to adopt an equitable national public health strategy or to avoid direct discrimination against specific groups such as disabled people, are not subject to progressive realisation, both are core obligations of immediate effect.

The United Nations human rights system provides some guidance on the core obligations arising from the rights to healthcare and health protection.³ However, the core obligations must be elaborated within the unique context of Aotearoa New Zealand. This is not an easy undertaking. More work needs to be done within the health and human rights community to clarify the contours and content of the core obligations of immediate effect arising from the rights to healthcare and health protection, grounded on Te Tiriti o Waitangi.

How has this approach helped around the world?



Case study – Italy⁴

The human rights to health care and health protection, protected in Italy's Constitution, have explicitly shaped Italy's national health service. The rights have been expressly included in national health plans, health interventions and community health schemes. For example, the guidelines for cancer screening remind health professionals that "access to screening is an application of a right". A World Health Organisation study on Italy found that applying human rights to women's and children's health policies, programmes, and other interventions has not only helped the Italian government comply with its binding national and international obligations but has also contributed to improving the health of women and children.



Case study - Brazil⁵

In Brazil, the values, and features of the rights to healthcare and health protection have been explicitly used to frame Brazil's family health programmes. These reforms led to reduced health inequalities and improved health outcomes especially for Brazil's poorest women and children. By the eighth year of the programme Brazil had seen a significant reduction of maternal mortality (53.1%) and infant and child mortality (34%).

³ See United Nations Committee on Economic, Social and Cultural Rights, General Comment 14.

⁴ See Chapter 3.3 "The right to health supports global public health" Carmel Williams et al. in Oxford Textbook of Global Public Health (7th edn) Roger Detels (ed.), Quarraisha Abdool Karim (ed.), Fran Baum (ed.), Liming Li (ed.), Alastair H Leyland (ed.).

⁵ Paul Hunt, Sonia Bhalotra, Carmel Williams, "The Role and Impact of the Right to Health: Evidence from Brazil's Family Health Program", *Human Rights Quarterly*, Volume 44, Number 1, February 2022, pp. 111-141