

Appendix K

Excerpts from relevant legislation

Children, Young Persons, and Their Families Act 1989

Paramountcy Principle (section 6):

"... [the] welfare and interests of the child or young person shall be the first and paramount consideration."

Reporting (section 15):

"Any person who believes that any child or young person has been, or is likely to be, harmed (whether physically, emotionally or sexually) ill-treated, abused, neglected, or deprived may report the matter to a Social Worker or a member of the Police."

Protection when disclosing (section 16):

"No civil, criminal, or disciplinary proceedings shall lie against any person in respect of the disclosure or supply or the manner of the disclosure or supply by that person pursuant to section 15 of this Act of information concerning a child or young person (whether or not that information also concerns any other person), unless the information was disclosed or supplied in bad faith."

Note: Section 16 provides statutory protection for health care providers who suspect child abuse and/or neglect to report.

Responsibility for investigation (section 17):

"Where any Social Worker or member of the Police receives a report pursuant to Section 15 of this Act relating to a child or young person, that Social Worker or member of the Police shall, as soon as practicable after receiving the report, undertake or arrange for the undertaking of such investigation as may be necessary or desirable into the matters contained in the report and shall, as soon as practicable after the investigation has commenced, consult with a Care and Protection Resource Panel in relation to the investigation."

Crimes Act 1961

Inform the Police if you have information relating to crimes such as the following:

"...homicide, sexual abuse, any assault on a child under the age of 16 years, or any assault on any person where that person has sustained some serious wound, disfigurement, grievous bodily harm or serious injury, or the nature of the injury or circumstances of the injury indicate that Police intervention is necessary for the further protections of the victim or any other offence included in Part 8 of the Crimes Act (Sections 151-210).

Failure to provide the necessities of life, abandonment, cruelty and abduction are offences in relation to children."

Domestic Violence Act 1995

Meaning of domestic violence as defined in the Domestic Violence Act 1995:

- (1) 'domestic violence' in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship with.
- (2) In this section, 'violence' means:
 - (a) Physical abuse
 - (b) Sexual abuse
 - (c) Psychological abuse, including but not limited to:
 - (i) intimidation harassment

- (ii) damage to property
 - (iii) threats of physical abuse, sexual abuse or psychological abuse
 - (iv) in relation to a child, abuse of the kind set out in subsection (3) of this section.
- (3) Without limiting subsection (2)(c) of this section, a person psychologically abuses a child if that person
- (a) Causes or allows the child to see or hear the physical, sexual or psychological abuses of a person with whom the child has a domestic relationship; or
 - (b) Puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring;
- But the person who suffers that abuse is not regarded, for the purposes of that subsection, as having caused or allowed the child to see or hear the abuse, or, as the case may be, as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.
- (4) Without limiting subsection (2) of this section
- (a) A single act may amount to abuse for the purposes of that subsection
 - (b) A number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.
- Behaviour may be psychological abuse for the purposes of subsection (2) (c) of this section which does not involve actual or threatened physical or sexual abuse.

Health Act 1956

Section 22C of the Health Act 1956 provides guidance on when a doctor can release health information.

- (1) Any person (being an agency that provides health services, or disability services, or both, or being a funder) may disclose health information
 - (a) If that information
 - (i) Is required by any person specified in subsection (2) of this section; and
 - (ii) Is required for the purpose set out in that subsection in relation to the person so specified; or
 - (b) If that disclosure is permitted –
 - (i) By or under a code of practice issued under section 46 of the Privacy Act 1993...
- (2) The persons and purposes referred to in subsection (1)(a) of this section are as follows: ...
 - (c) A Social Worker or a Care and Protection Co-ordinator within the meaning of the Children, Young Persons, and Their Families Act 1989, for the purposes of exercising or performing any of that person's powers, duties, or functions under the Act.

Health Information Privacy Code 1994

Rule 11 (Limits on disclosure of health information)

- (1) A health agency that holds health information must not disclose the information unless the agency believes, on reasonable grounds: ...
 - (b) that the disclosure is authorised by:
 - (i) the individual concerned; or
 - (ii) the individual's representative where the individual is dead or is unable to give his or her authority under this rule; ...
- (2) Compliance with paragraph (1)(b) is not necessary if the health agency believes on reasonable grounds that it is either not desirable or not practicable to obtain authorisation from the individual concerned and:



- (a) that the disclosure of the information is directly related to one of the purposes in connection with which the information was obtained:
- (b) that the information is disclosed by a registered health professional to a person nominated by the individual concerned or to the principal care giver or a near relative of the individual concerned in accordance with recognised professional practice and the disclosure is not contrary to the express wish of the individual or his or her representative; ...
- (d) that the disclosure of the information is necessary to prevent or lessen a serious and imminent threat to:
 - (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual: ...
- (i) that non-compliance is necessary:
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or...
 - (ii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation);
- (3) Disclosure under subrule (2) is permitted only to the extent necessary for the particular purpose...
- (5) This rule applies to health information about living or deceased persons obtained before or after the commencement of this code.
- (6) (Despite subrule (5), a health agency is exempted from compliance with this rule in respect of health information about an identifiable deceased person who has been dead for not less than 20 years.)

Note: Except as provided in subrule 11(4) nothing in this rule derogates from any provision in an enactment which authorises or requires information to be made available, prohibits or restricts the availability of health information or regulates the manner in which health information may be obtained or made available – Privacy Act 1993, s7. Note also that rule 11, unlike the other rules, applies not only to information about living individuals, but also about deceased persons – Privacy Act 1993, s46(6).

Should health care providers breach the Health Information Privacy Code, a complaint can be laid with the Privacy Commissioner for resolution.

Other relevant legislation

The Health and Disability Services Act 2001

This Act will focus on systems for preventing harm caused by providers of health and disability services and licensing requirements of service providers. This legislation (and related standards) may be relevant in cases of elder abuse and neglect in residential settings and/or abuse involving a contracted caregiver. The Bill provides for the Minister of Health to issue service standards which providers must comply with.

Health and Disability Sector Standards

NZS 8134:2001: These standards contain generic provisions across the whole of the health and disability sector, including home-based health care service providers. The standards include issues of quality and safe practice.

Other standards: A number of other standards contain information that may be relevant to issues of abuse. These include the National Mental Health Standard NZS 8143, and the Restraint Minimisation and Safe Practice Standard NZS 8141:2000.

Note: While this resource has been developed with all care and after consultation with many organisations, it is not intended to be legal advice.