

Hon Chris Hipkins

MP for Remutaka

Minister for COVID-19 Response

Minister of Education

Minister for the Public Service

Leader of the House



30 May 2022

Chuck Schooner

By email: fyi-request-19332-8fe6bf26@requests.fyi.org.nz

Ref: CHOIA261

Dear Chuck

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) on 12 May 2022 for:

- 1) Can the Minister please provide the definition used by the New Zealand Government in relation to informed consent?*
- 2) Does a mandate directly oppose a person's ability to obtain full informed consent associated with a medical procedure*

While I am unable to provide specific legal advice, I hope you find the following information useful.

For the purposes of health and disability services, the Code of Health and Disability Services Consumers' Rights (the Code) specifies that every person undergoing a health procedure has the rights that are set out in the Code including the right to make an informed choice and to give informed consent to any procedure, except where any enactment, or the common law. Or any other provision of the Code provides otherwise. The requirements of informed consent are at the heart of the Code and trigger a number of other rights in the Code (Rights 5, 6 and 7).

The Code provides that all persons must be presumed to be competent to make informed choices and give informed consent, unless there are reasonable grounds for believing they are not competent.

Included in the right to be fully informed is the right to an explanation of the options available, including an assessment of the expected risks, side effects, benefits of each option. A person can only give informed consent if they have been fully informed about the procedure.

As has been found in legislation relating to Orders under the Covid-19 Public Health Response Act 2020, even where there are mandatory requirements in Orders, these are not inconsistent with the requirements for informed consent. Persons can also make informed decisions knowing the consequences if they do not consent to medical treatment (such as vaccination or testing).

The New Zealand Bill of Rights Act 1990 provides that every person has the right not to be subjected to 'medical or scientific experimentation' without that person's consent and everyone has the right to refuse to undergo any medical treatment.

Under section 28(3) of the Act you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'CH', with a long horizontal flourish extending to the right.

Chris Hipkins
Minister for COVID-19 Response