

District Health Board decision not to consult on provision of abortion services at a Hospital was unreasonable

Legislation	Ombudsmen Act 1975
Agency	District Health Board
Ombudsman	David McGee/Ron Paterson
Case number(s)	338469
Date	August 2013

Whether the District Health Board was unreasonable to offer abortion services at a hospital without consultation with the local community

The complainant was a group complaining that a District Health Board failed to consult with the community when it made a decision to provide abortion services at a regional hospital. The group wanted this consultation to take place before abortion services commenced.

Ombudsman David McGee did not consider that any obligation existed to consult as the service was an extension of an existing one. On assuming responsibility for the complaint, Ombudsman Ron Paterson disagreed and advised that it was his opinion that, in addition to any statutory obligation to consult under the *New Zealand Public Health and Disability Act 2000*, a district health board may be required to consult on a proposed decision where fairness so requires. Where a decision maker such as a district health board knows that a funding or access decision (such as closing, outsourcing or extending a service) is likely to be controversial and to arouse strong views within the community, the Ombudsman's opinion was that it is good administrative practice to consult with the community, to allow community participation in the decision making process.

In considering this complaint, the Ombudsman's role was not to revisit the clinical or business decision to offer the abortion service in the region but rather to form an independent opinion as to whether, in making that decision, the DHB's conduct was fair and reasonable. Where an agency is acting in accordance with the specific requirements of the law, it would be difficult for an Ombudsman to form an opinion that the agency was acting unreasonably. The Ombudsman therefore investigated this complaint within those limits. During the course of the

investigation, the Ombudsman reviewed an extensive amount of information, including, relevant Acts of Parliament, Ministry of Health national guidelines, the standards of care and annual reports from the Abortion Supervisory Committee, the DHB's policies, and relevant papers and articles. The Ombudsman noted firstly that abortion is a lawful procedure in New Zealand and New Zealand's DHBs are required to fund lawful termination of pregnancy services meaning that abortions are classified in New Zealand as a core service. There was no question, therefore, that the DHB must fund and provide terminations of pregnancy. The DHB was already providing clinical abortion services in the wider region. Therefore, there is no doubt that this was an existing service offered by the DHB. The question for the Ombudsman in this case was whether the hospital in question, proposed abortion clinic was such an extension of an existing service that the board had - an obligation to consult with the community; or it was unreasonable for the board not to consult.

Ombudsman Ron Paterson met with the Chair and CEO of the DHB to express his opinion that it would be good practice to consult on a decision of this nature in the future.

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