



**Occupational Therapy  
Board of New Zealand**

TE PŌARI WHAKAORA NGANGAHAU O AOTEAROA

FOSTERING FAITH AND CONFIDENCE IN THE PROFESSION

# Facilitated Resolution Policy

OCCUPATIONAL THERAPY BOARD OF NEW ZEALAND

Prepared in consultation with Professor Chris Marshall,  
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## Preface

This policy is a collaborative activity between the Occupational Therapy Board of New Zealand (the Board). This work was complemented by Professor Chris Marshall, Diana Unwin Chair in Restorative Justice, Victoria University.

A facilitated resolution process aligns with the Board's approach to the regulation of health practitioners. The Board implement a Right-touch approach to regulation, a concept applied by the United Kingdom Professional Standards Authority in their oversight of the health and care professional regulators in the UK.<sup>1</sup> In addition, the Board in their responsiveness to Te Tiriti o Waitangi/Treaty of Waitangi require that the facilitation process meets the needs of Tangata Whenua.

Right-touch regulation urges taking a “common sense” approach, recognising that there is always risk which needs to be managed through regulation, but promoting that the most efficient and common sense regulatory solution is found to deal with that risk or problem. Principles of right-touch regulation include identifying a solution which is proportionate, consistent, targeted, transparent, accountable and agile, only to the extent that such approach does not conflict with, or override, any requirements of the Health Practitioners Competence Assurance Act 2003 (HPCAA) and/or the Accident Compensation Act 2001. These principles, aligned with the values of Tangata Whenua of wairuatanga, manaakitanga, rangatiratanga, whakawhanaungatanga, will ensure that the mana of all involved is not diminished.

The Board derived suitability criteria from the UK General Osteopathic Council, which are used to identify cases which a Professional Conduct Committee may consider suitable for the Consensual Disposal procedure, as a way of dispensing with the need to proceed to a hearing.<sup>2</sup>

Principles of restorative justice and Tangata Whenua values have been incorporated into this policy developed by Professor Marshall and AWE Consultants Limited to include a specific focus on the health sector and procedures that meet Tangata Whenua needs. It is intended that the alternative processes for dispute resolution set out in this policy will better meet the needs of parties involved, rather than applying the formal statutory process set out in the HPCAA in some circumstances.

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<sup>1</sup>“Right-touch regulation – revised, UK Professional Standards Authority, October 2015.

<sup>2</sup> General Osteopathic Council paper, Consensual Disposal under Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rule 2000, 17 October 2013.

## Purpose of Policy

1. The purpose of this policy is to allow for suitable complaints and concerns brought to the attention of the Registrar of the Occupational Therapy Board of New Zealand (the Board) to be addressed by means of a facilitated resolution process involving the complainant, the health practitioner and other relevant stakeholders, without the need for an statutory response under the provisions of the Health Practitioners Competence Assurance Act 2003 (HPCAA), unless required.
2. This policy allows for a variety of resolution processes to be used depending on the circumstances, including negotiation, mediation, tangata whenua tikanga and restorative resolution processes, and clarifies the procedures to be followed when the option is chosen.

## Role in the Complaints Process

3. If a person wishes to make a complaint about the practice or conduct of a health practitioner that has affected a health consumer, he or she may give notice of the complaint to the Health and Disability Commissioner (HDC) or the Registrar. Complaints received by the Board must be forwarded to the HDC for consideration in accordance with section 64 of the HPCAA. As part of its investigation, the HDC may refer the complaint to a health and disability services consumer advocate or call a mediation conference for the purpose of resolving the matter by agreement between the parties concerned. (Health and Disability Commissioner Act 1994 (HDC Act), ss37 and 61).
4. If the HDC refers the complaint back to the Board, the Registrar must, pursuant to section 65 of the HPCAA, *“promptly assess the complaint and consider, in light of the nature and circumstances of the complaint, the action or actions that the authority should take to respond to the complaint”*.
  - a. If the complaint alleges serious professional misconduct, incompetence, fitness to practise concerns, or criminal behaviour, the Registrar will refer the case to the Board to determine the next steps. Options available to the Board include requiring the practitioner to undergo a fitness review, competence review, referring the matter to a Professional Conduct Committee and/or imposing restrictions on practice pending further review or investigation.
  - b. Where the Board has referred a complaint to a Professional Conduct Committee (PCC) and that PCC has determined that the complaint be submitted to conciliation (s80(3) of HPCAA); the PCC is responsible for the appointment of a conciliator under section 82 of the Act; it may wish to utilise the appointment criteria for a conciliator, as set out in **Appendix One**.

- c. Some matters may be referred to and dealt with by another agency, such as the Accident Compensation Corporation (ACC) or the Office of the Privacy Commissioner.
  - d. Some minor matters or isolated mistakes may be dealt with by means of an educative letter or invitation to enter into a personalised voluntary agreement with the Registrar, about which the complainant will be informed.
  - e. In some situations, the Registrar may suggest a meeting take place between the complainant and the practitioner to address the issues raised, by means of a facilitated resolution process. This policy relates to such instances.
5. The Registrar will consider on a case-by-case basis whether a complaint or concern may be suitable for a facilitated resolution process, taking into account the suitability criteria set out in this policy below.

### Complaints

- a. '*Complaints*' are formal grievances about the practitioner's conduct, competence or fitness to practise. These will usually be dealt with by means of the statutory processes set out in the HPCAA and the HDC Act. Where the allegations do not involve ongoing risk to other parties, and the complainant and practitioner are agreeable, some complaints may be suitable for an informal resolution process.

### Concerns

- b. '*Concerns*' are matters of behaviour or practice that the person concerned feels strongly enough about to bring to the Registrar's attention, but does not wish to be treated as a formal complaint. These matters may often be resolvable through a facilitated resolution process.
6. Consistent with the principal purpose of the HPCAA and with the functions of the Board, any complaints process should aim to arrive at outcomes that protect the health and safety of members of the public, uphold professional standards and maintain public confidence in the profession and its regulation.
7. The goal of a facilitated resolution process is to resolve complaints or concerns about a practitioner's conduct or service in a way that is fair and respectful to all parties, satisfies their rights and needs for justice and tikanga, prevents repetition and enables practitioners to learn from past mistakes and improve the quality of future practice.

## Types of Facilitated Resolution Process

8. A facilitated resolution process may take various forms, including:

### Negotiation

- a. Negotiation typically is a process in which parties or their representatives work to reach settlement on disputed matters. Negotiation may occur *kanohi ki kanohi* (face to face) between the parties or their representatives or cultural advisors/*kaumatua*, or take the form of 'shuttle diplomacy' using an intermediary.

### Mediation

- b. Mediation is a consensual process involving the assistance of a third party mediator that explores issues of difference between the parties in order to reach a mutually agreed settlement. The mediator does not impose a solution on the parties but helps them to reach a conciliatory agreement. A *tikanga* advisor/*kaumatua* could be present, where appropriate, to ensure that *tikanga* is retained/maintained. There are many different types of mediation, ranging from approaches with the narrow aim of settling disagreements, to those with the broader aim of transforming relationships and building social skills - all of which ensure that *tikanga* is observed and *mana* is not diminished. For the purposes of this policy, mediation is seen as primarily settlement-oriented, with the settlement upholding the relevant values, including Maori values, *tikanga*, *kawa*, and standards of the health profession and *tangata whenua*.

### Restorative resolutions

- c. Restorative processes address situations where one party has suffered significant harm or hurt and the other party accepts responsibility for causing that harm, whether intentionally or unintentionally, and wants to offer repair. With the aid of a facilitator, the parties meet face to face (*kanohi ki kanohi*) to discuss the nature of the harm suffered, the needs it has created and what can be done to promote healing, *rangatiratanga* and to prevent recurrence.

Restorative processes may happen as an *alternative* to formal statutory processes (other than a claim under ACC) or run *in parallel* to such processes (e.g., where an allegation has been upheld by a statutory process, the responsible person may desire to meet the complainant/person concerned in order to apologise or offer restitution in a non-monetary way, or a complainant/person concerned may request such a meeting to tell the story of the impact of the incident).

Any such process would be subject to any personal injury claim with ACC, and would not provide a mechanism for any compensation, treatment, rehabilitation and/or any entitlements outside of that regime or under any other statutory process.

## Characteristics of Facilitated Resolution Processes

9. The essential characteristics of any approved facilitated resolution process are:

### Voluntary Involvement

- a. The Registrar must seek the informed consent of both parties to be involved; participation is completely voluntary.

### Third party facilitation

- b. The process is organised and conducted by an independent third party, such as a mediator, conciliator, tikanga advisor/kaumatua or restorative justice facilitator, who ensures the process is fair, balanced, according to tikanga, kawa, respectful and safe.

### Active participation

- c. The parties to the complaint or concern are actively involved in seeking to reach outcomes that resolve the matter in a mutually, culturally appropriate and agreed way. The third party is not permitted to impose a decision on the participants or to recommend any particular course of action or form of settlement. Decision-making power resides entirely with the parties themselves. The parties may seek legal advice, tikanga advice and have their lawyers or kaumatua present at the meeting; but the process is not generally conducted by legal representatives or any other professional advocates.

### Fair processes and outcomes

- d. The process seeks to satisfy the participants' need for *procedural justice* (a fair process in which they are treated with respect and have the opportunity to voice their views and be heard), *substantive justice* (outcomes that address the issue in a fair way and respect the rights of all) and cultural justice (fairness in relation to cultural and demographic information).

### Confidentiality

- e. All matters discussed and any outcomes reached are confidential to the parties and the Board, and are subject to the accompanying Facilitated Resolution Confidentiality Guidelines and according to tikanga negotiated between the parties. An environment of confidentiality allows the parties to speak freely and honestly, and to make offers, disclosures, apologies and even admissions without fear of

incurring legal liability. Confidentiality may only be waived at the agreement of both parties. This means that the information disclosed during the process is confidential and not available for use in other legal settings, subject to the same limited exceptions that apply in other confidential negotiations.

#### Cultural responsiveness

- f. The process strives to be accessible equally to the participants and to be respectful of the different languages, beliefs, life experiences, cultural and tikanga values represented by all parties.

#### Monitoring of Outcomes

- g. Where a practitioner agrees to undertake any remedial actions, agreements will include arrangements to monitor or confirm the completion of these outcomes and to report back to the complainant/person concerned and the Registrar. In some circumstances, the parties may agree to reconvene their meeting to mark the completion of agreements.

## Suitability Criteria

10. Not all cases are suitable for a facilitated resolution process. It is important that an initial assessment of suitability is made by the Registrar, taking into account the circumstances of the case, whether there are issues of wider public interest at stake, what is known of the parties involved, and what processes and/or claims the complainant concerned has already been through/made. The Registrar will seek advice from the Board Lawyer and Professional Advisor to inform his or her decision, and may also consult with the Board in this regard. Where cases are deemed potentially suitable, the decision to proceed rests solely with the affected parties.
11. In reaching a decision, the Registrar will consider the following suitability criteria. The list is indicative not exhaustive; in every case, the Registrar will exercise his or her discretion. Potentially suitable cases may include single instances of:
  - a. Poor or inadequate record keeping;
  - b. Failure to obtain an adequate case history;
  - c. Failure to carry out an adequate patient examination;
  - d. Failure to obtain adequate consent to treatment or examination, provided that any failings identified did not relate to intimate treatment or intimate examination and there is no complaint of sexualised behaviour;



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- e. Instances of inadequate explanation of examination to be undertaken, provided that any failings identified did not relate to intimate treatment or intimate examination and there is no complaint of sexualised behaviour;
  - f. Failure to take adequate steps to protect the dignity of a patient;
  - g. Inadequate explanation of techniques to be performed;
  - h. Poor communication, provided there are no underlying language difficulties;
  - i. Rudeness and poor customer service;
  - j. Disputes over the number of treatments prescribed;
  - k. Conduct matters relating to breaches of patient confidentiality;
  - l. Accusations of discrimination, bullying or disrespectful treatment;
  - m. Lapses of judgement that caused distress or harm but did not constitute incompetence; and
  - n. cultural inappropriateness or racism
12. Note: The term “single instance” may include:
- a. a single occasion of wrongdoing or failure in relation to a single consultation;
  - b. multiple forms of wrongdoing or failures within a single consultation; and/or
  - c. multiple wrongdoing or failures in multiple consultations which all relate to a single patient.
13. In exercising his or her discretion, the Registrar will also consider whether there is evidence to suggest the practitioner:
- a. poses any danger to patients or risk of harm to the public;
  - b. has shown insight into his or her failings;
  - c. has repeated the behaviour in question;
  - d. was acting under duress;
  - e. has expressed genuine remorse;
  - f. has taken corrective steps;
  - g. has a previous good history; and
  - h. has undertaken appropriate tikanga support/training.

14. Cases involving a serious risk of harm to the public are not suitable for a facilitated resolution process as an alternative to a formal statutory process. Such cases would include, but are not limited to, those involving:
  - a. Violence or threatened violence;
  - b. Sexualised behaviour;
  - c. The abuse of minors and children (including child pornography and neglect) or vulnerable persons within the meaning of the Vulnerable Children Act 2014;
  - d. Dishonesty, deception or fraudulent behaviour;
  - e. Failure to have in place adequate professional indemnity insurance;
  - f. Criminal convictions for similar behaviour in the past;
  - g. Treatment which has resulted in or had the potential to do significant physical harm to a patient;
  - h. Significant failings in the treatment of several patients;
  - i. Matters which have the potential to damage public confidence in the profession; and
  - j. Deliberate breach of tikanga

## Procedures for a Negotiated Process

15. For cases that meet the suitability criteria, the Registrar will notify both parties of the proposal to seek a negotiated outcome, with the following process to be followed:
  - a. The complainant/person concerned will be invited to submit any further comments or information;
  - b. The practitioner will be offered the opportunity to submit comment in response and any further information; and
  - c. The Registrar or his/her delegate will manage the negotiation process between the parties or their representatives.
16. An immediate negotiated outcome may be achieved where:
  - a. both parties agree on a statement of facts; and
  - b. the Board accepts the proposed course of action is in the public interest and no further action is necessary under the HPCAA; and
  - c. both parties agree the matter may be satisfactorily dealt with by one of the actions set out below (paragraph 17).
17. Negotiated outcomes may include one or more of the following:
  - a. The Board issuing a letter of censure or admonishment to the practitioner;
  - b. The Board sending a letter of education drawing the practitioner's attention to relevant information or advice relating to good practice;
  - c. The practitioner agreeing voluntarily to undertake specified training and/or to undergo a period of supervision;
  - d. The practitioner agreeing voluntarily to have their scope of practice limited in specified ways or have certain conditions included in their scope of practice;
  - e. The practitioner agreeing to meet specific remedial requests on the part of the complainant/person concerned, other than those arising directly or indirectly from a personal injury covered by ACC.
18. The negotiated outcome is recorded and signed by the parties, and retained on record by the Registrar or his/her delegate.
19. Please note that monetary requests are specifically excluded in the policy

## Procedures for a Mediation Process

20. For cases where the parties are unable to achieve an immediate negotiated outcome but are willing to discuss matters further, a settlement may be achieved by way of mediation. If both parties agree to this option:
  - a. The Board will appoint an appropriately qualified mediator from its panel of facilitators, based on the appointment criteria set out in Appendix One.
  - b. The mediator will have no personal interest in the matters in dispute and, prior to accepting the appointment, shall disclose any dealings with any of the parties, or acquaintance of the parties, or knowledge of the dispute. The appointment shall not be complete until agreed to in writing by the parties under an 'Agreement to Mediate'
  - c. The complainant/person concerned will be invited to submit any further comments or information.
  - d. The practitioner will be offered the opportunity to submit comment in response, and any further information.
  - e. The appointed mediator will be sent information regarding how the case meets the suitability criteria for mediation, the statements of both parties and the views of the Registrar and/or HDC on the matter (if any).
21. Parties to the mediation are the complainant/person concerned and the practitioner. A party may choose to be represented at the mediation by one or more persons, including a legal advisor, whanau and/or support person. The names of such persons shall be communicated in writing to the mediator and to the other participants. Any other persons may attend the mediation only with the consent of all parties.
22. The mediation will be conducted in accordance with an Agreement to Mediate and with the recognised standards and values of mediation. The mediator will not give any legal or other professional advice or impose an outcome or make any decision on behalf of any of the parties.
23. The parties shall co-operate in good faith with the mediator and with each other in attempting to settle the dispute. They will comply with the mediator's reasonable directions to attend meetings and to provide documents, information and submissions.
24. The mediator shall not be bound by any formal procedures or rules of evidence, and may become informed in relation to any matter in such manner as he or she thinks fit.
25. The costs of mediation will be met by the Board.
26. If the parties agree to a resolution of the concern or complaint, a record of the essential terms of the outcome must be recorded and signed by the parties before they leave the mediation.

The signed outcome is to be documented by way of a document entitled “*The Mediated Agreement*”. Outcomes may include, but are not limited, to those available through a negotiated outcome in paragraph 17 above; although are strictly limited to those available outside the ACC regime.

27. The parties and the mediator shall maintain the confidentiality of the process, and shall not discuss the dispute and/or the outcome with others who are not involved with the process, unless directed to do so by a Court. The mediation shall be without prejudice to the dispute and shall not be referred to or relied upon in any other proceedings.
28. The mediator is required to report the outcome of the mediation (but not the specifics of it, unless agreed by all parties) to the Board; and to make any general comments/recommendations for any wider learnings for patient protection and/or to avoid similar situations in the future.
29. The mediator may terminate his or her involvement in the mediation if, after consultation with the parties, he or she feels unable to assist them to achieve a resolution.

## Procedures for a Restorative Resolution Process

30. In cases where the complainant/person concerned has suffered harm or hurt and the practitioner accepts responsibility for causing that harm or hurt, whether intentionally or unintentionally, after considering the suitability criteria the Registrar may consider the case is appropriate for a restorative resolution conference. If both parties agree to this option:
  - a. The Board will appoint an appropriately qualified restorative resolution facilitator from its panel of facilitators, based on the appointment criteria set out in Appendix One. The facilitator will have no personal interest in the matters in dispute and, prior to accepting the appointment, shall disclose any dealings with any of the parties, or acquaintance of the parties, or knowledge of the dispute. The appointment shall not be complete until agreed to in writing by the parties and accepted in writing by the facilitator.
  - b. The complainant/person concerned will be invited to submit any further comments or information.
  - c. The practitioner will be offered the opportunity to submit comment in response, and any further information.
  - d. The facilitator will be sent information including an explanation of how the case meets the suitability criteria for restorative resolution, the statements of both parties and the views of the Registrar and/or HDC on the matter (if any).
31. The costs of the process will be met by the Board.
32. The facilitator will meet independently with both parties and their support persons prior to the conference to explain the process, gather further information and assess the suitability or readiness of the parties for the process. The facilitator will encourage the parties, including the Registrar, to identify any other stakeholders who may be usefully invited to attend.
33. The conference will aim to arrive at mutually agreed outcomes that will address the complainant's needs, promote repair and prevent recurrence. A record of the essential outcomes must be signed by the parties before they leave the conference. The signed outcome will be documented by way of a "*Restorative Resolution Agreement*". Outcomes may include, but are not limited to, those available through a negotiated outcome in paragraph 17, although are strictly limited to those available outside the ACC regime.
34. The restorative resolution will be conducted according to the principles and values of restorative justice practice recognised by the New Zealand Ministry of Justice, and including where applicable:

### Voluntary Involvement

- f. No legal or moral coercion must be used to encourage the parties to participate; involvement is entirely voluntary.

### Democratic Participation

- g. Those most affected by the incident are the principal speakers and decision-makers in the process and contribute to the outcomes of the meeting. If present, professional advocates, such as lawyers, do not speak in place of their clients or negotiate outcomes.

### Inclusive of all affected parties

- h. A restorative process aims to bring together all those who have a direct stake in the complaint, conflict or concern to deal with it collaboratively. Involving all the parties and whanau for whom the issue really matters helps to manage power imbalances and to promote creative solutions.

### Respectful dialogue

- i. The parties agree in advance to treat each other with respect. This means avoiding abuse, threats, ridicule or demeaning language. It also means listening attentively to other participants, allowing them to speak of their experience without interruption or disparagement. Mutual respect engenders trust and good faith between the participants and ensures the safety of the process.

### Focuses on Harms and Needs

- j. A restorative process is concerned primarily with clarifying how the complainant has been harmed by what happened, what their resulting needs are and how things may be put right again. (This process does not, however, provide a complainant with a mechanism to obtain any financial compensation and/or any other entitlements arising directly or indirectly out of a personal injury covered by ACC.) With the help of a facilitator, the dialogue will focus on five main questions:

What happened?

What impact has it had on the parties?

What questions still need to be answered?

What can be done to promote healing or repair or bring about improvement?

What will prevent the same thing happening again?



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### Clarifies accountabilities and obligations

- k. An essential restorative principle is that those who have caused the harm, whether intentionally or unintentionally, accept personal responsibility for their actions and the consequences. Accountability involves meeting directly with the harmed party, speaking truthfully about what occurred and undertaking specific actions that will help to promote repair and avoid repetition.

### Equality of concern

- l. A restorative resolution is a relational, collaborative process rather than adversarial or punitive process. It recognises the inherent dignity and mana of both parties, the relationship that exists between them as co-participants in the harmful event and what each has to offer to the other in dealing with it. Its distinctive focus on harms, needs, obligations and reparation enables the restorative process to serve the best interests of both parties and also of the wider community.

### Forward looking

- m. Because it strives to restore as much wellbeing as possible to the affected parties and to prevent recurrence, a restorative resolution process is forward looking. It is not only concerned with clarifying and acknowledging what happened in the past but also with equipping the participants for a better future.

### Culturally appropriate

- n. Restorative processes are responsive to the cultural and spiritual values, traditions, cultural practices, and beliefs of participants

### Tikanga appropriate

- o. Where Maori are involved, acknowledgement of tikanga practices and the central place of whanau and whakapapa is fundamental. Efforts to involve whanau in resolution processes are important because whanau share collective responsibility for the welfare of whanau members and any decision-making relative to their interests. The experience of harm is also a shared reality, extending beyond the individual 'victim' to affect others in the extended whanau/whanui. By involving the whanau/whanui in addressing harms and conflicts, restorative processes work to restore the mana and wellbeing of all involved.

## Conclusion

35. A facilitated resolution process is most beneficial when it is used at the earliest opportunity after a complaint or concern has been lodged. If grievances are ignored or delayed, they tend to escalate.
36. The greatest challenge for the Registrar is to balance the need of complainants/persons concerned for a timely and satisfying resolution process; and the public's need for transparency, accountability and protection of future consumers. Facilitated resolution processes must never be allowed to compromise public confidence in the profession.
37. Where facilitated processes are deemed appropriate, the Registrar must consider whether negotiation, mediation or restorative processes would be most suitable, at least as the starting point. Mediation and restorative processes typically involve face to face meetings between the complainant and the practitioner. Since complainants/persons concerned are disinclined to participate in such encounters over relatively trivial matters, it is best to reserve restorative processes for situations where they feel they have suffered significant harm or loss.
38. While restorative resolution processes may be used as an alternative to formal statutory process, they may also run in parallel to formal processes as a way of meeting the emotional, cultural, moral and relational needs of the parties that cannot be addressed in the formal venue and statutory context. In both contexts – as an alternative or a parallel process – facilitated, face to face meetings allow the opportunity for explanation, storytelling, understanding, apology, validation, restitution, reconciliation, assurances about future prevention and learning from past mistakes to occur.

## Glossary of terms and abbreviations

HPCAA: Health Practitioners Competency Assurance Act (2003)

PCC: Professional conduct committee

HDC: Health and disability commissioner

ACC: Accident Compensation Corporation

Board: The Occupational Therapy Board of New Zealand

The Complainant: The person who has made the complaint

The Practitioner: The person whom the complaint has been made about

## Biography – Professor Chris Marshall

The Diana Unwin Chair in restorative Justice

**Professor Chris Marshall** graduated from Victoria University in 1975 with a BA (Hons) in geography and anthropology.

He subsequently completed degrees in Divinity (1980) and Peace Studies (1996) and a PhD in New Testament from the University of London (1984). After teaching for 20 years in Auckland, he joined the Religious Studies Programme at Victoria in 2004.

In 2013 he was appointed as inaugural holder of the Diana Unwin Chair in Restorative Justice, located in the School of Government.

Chris has published seven books and a large number of book chapters and journal articles, many dealing with restorative justice themes.

He is also an active and accredited restorative justice facilitator, and has been widely used around the world as a conference speaker and visiting lecturer.

The Chair in Restorative Justice is sponsored by the Ministry of Justice, the Department of Corrections, the NZ Police, the Ministry of Education, the Ministry of Social Development, the NZ Defence Force, and The G Trust.

## APPENDIX ONE

### Appointment of third party facilitators

#### Selection Criteria for third party facilitators

1. When appointing the a third party facilitator, the Board will require the facilitator to possess:
  - a. A sound level of training, understanding and knowledge of the advocacy, theory and practice of being a mediator, conciliator and/or restorative justice facilitator.
  - b. Practical experience as a mediator, conciliator and/or restorative justice facilitator; with preferably specific involvement in resolving complainants by consumers against health professionals.
  - c. Membership and/or fellowship of a recognised professional organisation, such as Arbitrators' and Mediators' Institute of New Zealand ("AMINZ"), Restorative Practices Aotearoa or the Resolution Institute.
  - d. A current AMINZ (or similar) continuing professional development certificate demonstrating they are current and up to date with their continuing professional development requirements.
  - e. A broad understanding of the statutory regime for the health sector and the rights and remedies of consumers in that sector.
  - f. An understanding of the importance of New Zealand's unique bicultural heritage and a commitment to upholding Tangata Whenua values and tikanga.
2. All facilitators will be independent intermediaries, and not an advocate for any party, including the Board. He or she will act impartiality, fairly and objectively, and treat each party in an even-handed way. He or she will not coerce any party into an agreement or to make a decision for the parties; but will be able to demonstrate the ability to address effectively the needs of parties who seek a facilitated resolution process.

#### Selection Criteria for Specific Facilitated Resolution Process

3. In appointing a facilitator to assist with the resolution of a specific complaint from the Panel, the Board will have regard to the following criteria:
  - a. The relevant experience and expertise of the proposed facilitator bearing in mind the subject matter of the complaint; the resolution process to be followed; and the outcome desired by the complainant.
  - b. The geographical location of the proposed facilitator, the complainant and the health practitioner.
  - c. The cultural appropriateness of the facilitator.

- d. Any preferences (or strong objections) as set out by the parties in their communications regarding the proposed appointment.
4. Any such appointment will be consistent with and in accordance with the Facilitated Resolution Policy and/or any statutory requirements.