

INFORMED CONSENT POLICY

PURPOSE

The Male Survivors Aotearoa ('MSA') Informed Consent Policy ('Policy') provides guidelines for peer-workers (both employees and volunteers), trustees and advisors working for the national organisation or MSA Member Organisations ('MMO's).

The purpose of the Policy is to ensure that peer-workers and/or other personnel acting for or on behalf of MSA or an MMO have the informed consent of male survivors when:

- Obtaining any information about male survivors, whether directly or indirectly from any third party; and/or
- Providing any services to male survivors, including services that may involve their family/whanau or other related parties;

Informed consent is not only required to activate any services but must also be present for the duration of the service provision.

SCOPE

This Policy applies to all peer-workers (employees and volunteers), trustees and advisors engaged by MSA or an MMO and also to any other personnel engaged by MSA or an MMO to enable the delivery of services to male survivors and/or their family/whanau or other related parties.

OBJECTIVES

Applying this Policy will ensure that:

- Peer-workers, trustees and advisors understand their obligations and responsibilities relating to the requirements for obtaining informed consent in respect of obtaining information from, and providing services to, male survivors;
- Male survivors are aware of their rights in respect of providing informed consent prior to providing information about themselves and/or agreeing to participate in any services offered by MSA or an MMO; and
- There is alignment with the relevant legislation (Human Rights Act, Health and Disability Act, Child Youth and Families Act and Vulnerable Children's Act)

DEFINITIONS

**Informed
Consent**

Informed consent is the act of agreeing to allow something to happen, or to do something, with a full understanding of all the relevant facts, including risks, and available alternatives. That full knowledge and understanding is the necessary factor in whether an individual can give informed consent

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| Children & Young Persons | Includes all children and young people under the age of 18 years. |
| Family/whanau | Means not only the male survivor's partner and immediate family but may include their whanau, extended family and relatives. |
| Male survivor | Means a male who has experienced sexual abuse. |
| MMO | Is an organisation that is affiliated with MSA through a formal membership agreement that accredits the organisation as an official Member Organisation of MSA. |
| MSA | Is the national organisation Male Survivors Aotearoa New Zealand, which provides national advocacy for male survivors and governance, coordination and representation for MMO's. |
| Other personnel | Includes counsellors, social workers and other therapists and support people engaged by MSA or an MMO to provide support services to male survivors. |
| Peer-worker | Means an individual engaged as an employee or volunteer by MSA or an MMO to provide peer-support services to male survivors. |
| Related Parties | Means any person that the male survivor deems to be important as a participant in their recovery journey and may include friends and support persons as well as members of their family and whanau. |
| Survivor | Means a person who has experienced sexual abuse and in the context of this Policy will usually refer to a male survivor |
| Trustee | Means a trustee of MSA or an MMO |

CORE ELEMENTS

Informed consent is basic to an individual's freedom, rights and self-determination. It comprises four key elements:

- **Competence:** Male survivors giving consent for a service either for themselves or for a service that involves others (e.g., family/whanua and/or friends) must have the ability and/or support to make a decision based on the information provided. Competence is not determined by age but rather, the ability to make the decision.
- **Voluntarism:** Male survivors must be able to make the decision of their own free will. There must be no pressure or coercion applied to gain consent. They also have the right to withdraw that decision at a later date.
- **Full information:** All necessary information must be given to allow male survivors to make an informed choice about providing information and/or service delivery options.
- **Full comprehension:** Information needs to be given in an environment that is culturally appropriate and enables open and honest communication. There must be opportunities to freely ask questions about any aspect of the service being offered. Interpreters should be used, where necessary.

In summary, this means that male survivors giving the informed consent for a service, either for themselves or for others must be competent to make the decision, participate voluntarily, have received full information and comprehended it, and understood the implications of agreeing to the service.

CULTURAL CONSIDERATIONS

Peer workers must make every effort to ensure that informed consent discussions are culturally responsive by:

- allowing appropriate time for decision-making, requesting the assistance of cultural advisors, e.g. kaitakawaenga;
- ensuring that survivors and families/whānau are fully informed in a manner they understand;
- taking into consideration the implications of providing a service for a child who has been 'gifted' to a family (as in a number of Māori and Pasifika families), but where no formal legal arrangement has taken place;
- using interpreters for survivors and/or their families whose first language is different to that of the peer worker; and
- acknowledging the importance of including the wider family/ whānau in decision-making , and recognising the importance of community networks.

ETHICAL CONSIDERATIONS

The MSA Code of Ethics provides that the fully informed consent of the survivor is key to the provision of any support service.

“Each survivor should be provided with all rights to information as required by NZ legislation, and information regarding support service options and processes. The survivor should be given enough information and support options, including the right to refuse, to enable him to make a fully informed choice about how to engage with any support services. Peer workers should use clear, understandable and appropriate language to convey to survivors the purpose of the support services offered.”

The MSA Code of Ethics also requires peer workers to have a responsive and positive regard for cultural diversity.

“The peer-worker upholds and protects the survivor’s cultural identity by acting only in a manner that is supportive of the survivor’s mana or cultural wellbeing. Peer-workers should be informed about the meaning and implementation of the principles within the Treaty of Waitangi, and seek advice and training in the appropriate way to show respect for the dignity and needs of Maori in their practice.”

ONGOING CONSENT

Informed consent is an ongoing process and there must be appropriate evidence of ongoing informed consent.

It is highly desirable to have the MSA Confidential Record Form signed by the male survivor but it is not necessary to have ongoing consent signed. However, peer workers must ensure that they have made file entries noting the detail and dates of all informed consent discussions including any changes in services or service providers that would trigger a need to confirm informed consent.

COMPETENCE

Every male survivor must be presumed competent to make an informed choice, or give informed consent, unless there are reasonable grounds for believing that the consumer is not competent.

The survivor's age can be a relevant factor to take into account when determining competence, but there are several other factors that must also be considered.

These include the survivor's level of understanding and maturity, and the nature of the information requested and/or the support services to be provided. It is particularly important that the peer worker determines whether the particular individual, regardless of their age, has the capacity to consent to the particular form of service proposed.

Where a survivor has diminished competence, that survivor retains the right to make informed choices and give informed consent to the extent appropriate to his/her level of competence

Determining competence

In any communication regarding Informed Consent, the peer worker should try to validate a survivor's comprehension, for instance by asking the survivor to describe what has been said, in his or her own words. If the survivor demonstrates confusion, an inability to reason, or behaviour inconsistent with past behaviour, the peer-worker must consult with an individual who is legally entitled to consent on the survivor's behalf.

If a person who is legally entitled to consent on behalf of the noncompetent survivor is available, consent to treatment should be obtained from that person. Persons who may legally consent on behalf of a consumer include a legal guardian (parent/guardian under the Guardianship Act, or a welfare guardian appointed under the Protection of Personal and Property Rights Act), or a person with an enduring power of attorney for the consumer's personal care and welfare.. In this situation, a peer worker must go through the process of obtaining consent before providing any services to that survivor.

Where no person entitled to consent on behalf of the non-competent survivor is available, the peer worker may provide services where:

- ✓ It is in the best interests of the survivor; and
- ✓ Reasonable steps have been taken to ascertain the views of the survivor; and
- ✓ Where either:
 - The survivor's views have been ascertained, and having regard to those views the peer worker believes, on reasonable grounds, that the provision of the services is consistent with the informed choice the survivor would make if he or she were competent; or

- The survivor's views have not been ascertained, but the peer worker takes into account the views of other suitable persons who are interested in the welfare of the survivor and available to advise the peer worker.

Children and young persons

There is no particular age at which a child can consent to receiving support services. The law in this area focuses on whether the level of understanding of a particular child enables him or her to consent to a particular service. Minors may authorise their support services if they are mature enough to understand what is proposed and are capable of expressing their own wishes.

If a service is to be provided to a child, then consent may be obtained from the child's parent or guardian. However if the child is regarded as a mature minor, then that child is considered to have the capacity to consent (or to decline services) on his or her own behalf.

The overriding principle is that the best interests of the child should be upheld¹.

Ordinarily both parents are considered the legal guardians of a child and consent from both parents should be sought in decisions that involve the provision of services.

Processes of seeking consent for children and young persons, and any decisions arising, should be fully documented in the client records, including options explored and who was consulted.

In addition to the right to be protected, the rights of the child to be seen as having individuality and therefore some autonomy². This includes involving children in decisions about their health and welfare. Both children and adults are presumed to be competent to make an informed choice, unless there are reasonable grounds for believing otherwise³. Adults over the age of 18 are ordinarily assumed capable of giving informed consent. Children and young persons below this age may also be capable of doing so.

INFORMATION

Fit for Purpose

The male survivor should be informed of the intended aims and objectives of their engagement with a peer-worker, using language, form of information, and manner that promotes understanding. Information may need to be adjusted to allow for any language or cultural barriers, as well as any cognitive or communication difficulties. This may mean adapting and presenting information in a more accessible manner, for example using simpler wording.

The client should be given time to consider the information given.

¹ The Care of Children Act 2004 (COCA) makes the "best interests and welfare of the child" paramount

² The United Nations Convention on the Rights of the Child (ratified by New Zealand in 1993)

³ The Code of Health and Disability Services Consumer's Rights

Adequacy

Adequate information is what a reasonable person in the male survivors' situation would expect to receive, including an explanation of how the peer support relationship is intended to work, what support services may be considered, the likely outcomes/or benefits, any potential risks, the confidentiality of the survivor records, any alternative options, and how consent may be reviewed or rescinded at any time.

The understanding of what information is deemed to be relevant is likely to evolve as the engagement with a survivor unfolds.

Alternatives

Discussing engagement options and alternative services may include acknowledging alternative expertise and how to access these alternatives. The nature of the services offered and the likely outcome of the service should be described, without overstating any anticipated benefits. By offering the service the peer worker is implicitly claiming to be knowledgeable about the service offered. If asked, the peer worker is obliged to inform the survivor of their professional status, qualifications and experience.

Risks

It may be appropriate to inform the survivor of the consequences of not consenting to proceed. Any potential risks arising from the proposed services should be discussed with the survivor. This would include any fees payable, time estimates, and any privacy and confidentiality issues.

Collective Consent

A focus on individuality is not necessarily appropriate within some collectives. Māori and Pasifika families place more emphasis on shared responsibility and permission giving, as do many in the Asian and Arabic communities.

When a Māori person is seen, it may be more appropriate to offer the option of providing information to the whānau and allow time for the consent process to be gained from the wider group. This is likely to be a preferred way of proceeding, particularly when a child is the focus of the service to be provided.

Confidentiality

Depending on the nature of the service, there may be circumstances where the peer worker needs to forewarn the survivor that in the event of disclosure of illegal activity, or activity that places another person at risk, or reason to be concerned that the client may be at risk to him or herself, then the peer worker may feel ethically and morally bound to inform relevant other authorities.

VOLUNTARY CHOICE

Consent should be obtained in circumstances which do not place undue pressure on a survivor.

There are many issues which may compromise a survivor's ability to freely make their own choice. Compromise may occur because of the power imbalance implicit in the situation, a survivor's desire to please, or because of the situation.

A survivor may be highly motivated to receive help and therefore susceptible to being persuaded by the support choice offered by the peer worker. The peer worker may also be susceptible to overstating the expected positive outcome in their desire to help the survivor.

Peer workers should also be sensitive to threats to the voluntariness of a survivor's decision, which may come from other sources, such as the survivor's close family members.

Consent should not be based on suggestion or persuasion but on comprehension.

RECORDING CONSENT

In most situations verbal consent is sufficient, however peer workers are strongly advised to obtain consent in writing whenever it is practicable to do so. This is particularly important when dealing with Children and Young Persons. Written consent is most simply achieved by the survivor signing the Client Consent section of the MSA Confidential Client Information form, which also consents to the recording of the information obtained from the survivor.

The fact that verbal consent has been obtained should be recorded in the survivor's personal record. It is also advisable to record the alternatives, risks and any other factors that have been discussed with the survivor to inform their consent decision.