

# Te Tiriti o Waitangi compliance in regulated health practitioner competency documents in Aotearoa

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## ABSTRACT

Within Aotearoa (New Zealand) there are systemic health inequities between Māori (the Indigenous people of Aotearoa) and other New Zealanders. These inequities are enabled in part by the failure of the health providers, policy and practitioners to fulfil treaty obligations to Māori as outlined in our foundational document, te Tiriti o Waitangi (te Tiriti).

Regulated health professionals have the potential to play a central role in upholding te Tiriti and addressing inequities. Competency documents define health professionals' scope of practice and inform curriculum in health faculties. In this novel study, we critically examine 18 regulated health practitioners' competency documents, which were sourced from the websites of their respective professional bodies. The competencies were reviewed using an adapted criterion from Critical te Tiriti Analysis, a five-phase analysis process, to determine their compliance with te Tiriti.

There was considerable variation in the quality of the competency documents reviewed. Most were not te Tiriti compliant. We identified a range of alternative competencies that could strengthen te Tiriti engagement. They focussed on (i) the importance of whanaungatanga (the active making of relationships with Māori), (ii) non-Māori consciously becoming an ally with Māori in the pursuit of racial justice and (iii) actively engaging in decolonisation or power-sharing.

In the context of Aotearoa, competency documents need to be te Tiriti compliant to fulfil treaty obligations and policy expectations about health equity. An adapted version of Critical te Tiriti Analysis might be useful for those interested in racial justice who want to review health competencies in other colonial settings.

The health of Māori is a taonga (something treasured and valuable).<sup>1</sup> As with other Indigenous peoples, Māori experience a disproportionate burden of disease.<sup>2</sup> These inequities are fuelled by the intergenerational legacies of colonisation and historical and contemporary manifestations of institutional racism.<sup>3</sup> Alongside the Declaration on the Rights of Indigenous Peoples,<sup>4</sup> which reaffirms the rights of Indigenous peoples to health, in Aotearoa there is also te Tiriti o Waitangi (te Tiriti), which was in part negotiated to protect Māori health.<sup>1</sup>

Te Tiriti o Waitangi (Māori text), which was negotiated between the British Crown and hapū (Māori sub-tribes), is the founding

document of the colonial state of New Zealand. This unique treaty granted the British the right to govern their people in Aotearoa, reaffirmed Māori tino rangatiratanga (absolute sovereignty), gave Māori equal citizenship rights and guaranteed religious freedom.<sup>5</sup> This meant the protection of Māori domain over land, resources and aspirations. Te Tiriti was signed by William Hobson (the Queen's representative) and more than 500 rangatira (chiefs), and it is recognised under the legal doctrine of *contra proferentem* as the authoritative text.<sup>6</sup>

The existence of the Treaty of Waitangi (the Treaty (English version)) has historically created confusion due to the widely

held interpretation that Māori ceded sovereignty, despite the Māori version clearly reaffirming Māori tino rangatiratanga. The authors maintain that repeated references by the Crown (the Government) to the English version and the unilateral development of ‘Treaty principles’<sup>7</sup> has created a systematic process of disinformation that serves to protect the status quo and the Crown’s assumption of unitary parliamentary sovereignty. This confusion was institutionalised in the Treaty of Waitangi Act 1975, which enables investigation of breaches of both te Tiriti and the Treaty, undermining the definitive position of the Māori text.

Within the health sector, the New Zealand Public Health and Disability Act 2000 refers to the Treaty and, more specifically, to the Treaty principles of partnership, protection and participation.<sup>8</sup> Most health policy refers to the Treaty and/or Treaty principles rather than te Tiriti.<sup>9</sup> The disinformation continues with the recent Cabinet Office<sup>10</sup> circular that affirmed the central place of the Treaty rather than te Tiriti in contemporary public policy.

In clear deference to the Māori text, the Waitangi Tribunal in 2014 (WAI 1040)<sup>11</sup> ruled that, by signing te Tiriti, Ngāpuhi (a major northern tribal confederation) did not cede sovereignty. More recently the Waitangi Tribunal ruled (WAI 2575) that key health legislation and policy were not Treaty and/or te Tiriti compliant.<sup>12</sup> With a major review of the health sector underway,<sup>13</sup> it is timely to re-examine regulated health professionals’ competency documents in relation to their compliance with te Tiriti.

## Methods

Regulated health professionals are identified within the Health Practitioners Competence Assurance Act 2003, the Medical Practitioners Act 2007 and the Social Workers Registration Legislation Act 2019. Under this legislation, practitioners are expected to be accountable to their professional authorities and be competent to practice. Annual practising certificates are issued to ensure practitioners work within their professional scope of practice. The 18 professional groups covered by these Acts are chiropractors, dental practitioners, dietitians, medical practitioners, medical

radiation technologists, medical technicians, midwives, nurses, occupational therapists, optometrists and dispensing opticians, osteopaths, physiotherapists, pharmacists, podiatrists, psychologists, social workers and psychotherapists.

Following up on Heke, Wilson and Came’s<sup>14</sup> examination of regulated health practitioners’ cultural competencies, this paper examined more deeply their engagement specifically with te Tiriti. Core competency documents for the database were collected from the websites of regulated health professional bodies in November–December 2019.

We adopted a five-phase Critical te Tiriti Analysis (CTA)<sup>15</sup> to assess te Tiriti compliance of the regulated competency documents. The first phase involved orientating how the competencies address Māori health with reference to priorities, language and epistemologies and how they reflect tino rangatiratanga, Māori citizenship and ōritetanga (equity). The second phase was a close examination on engagement with the five domains (preamble and four articles) of te Tiriti (Table 1).

Phase three involved a determination of competency development, performance and evaluation on a Likert-type five-point rating scale (poor, uncertain, fair, good, excellent) across each of the five domains. Phase four involved identifying how the competencies could be strengthened. Phase five involved a final Māori critique.

In terms of competency documents, we prioritised using core competency documents rather than any peripherally positioned cultural competency/safety or Māori health documents.

## Results

### Phase one: competency orientation

The collection of competencies we reviewed were published between 2003 and 2019. There was diverse usage of the terms ‘the Treaty’, ‘te Tiriti’ and/or ‘the Treaty principles’. The core competency documents of optometrists/opticians and dentistry make no mention of te Tiriti, the Treaty or Treaty principles. Fifteen professions, including the medical profession, mention only the Treaty and/or the arguably non-Tiriti compliant Treaty principles. This Crown construction

effectively fails to address the actual undertakings embodied in te Tiriti. Only one profession, occupational therapy, orients to both te Tiriti and the Treaty of Waitangi and does not default to Treaty principles.

### Phase two: competency close examination

In a CTA, each of the five te Tiriti domains has an indicator to help assess compliance. These domains are explored more fully elsewhere.<sup>16</sup> They are adapted here to relate specifically to competencies.

#### Preamble

*Te Tiriti is central and Māori are equal or lead parties*

Several of the competency documents acknowledged Māori as tangata whenua—people of the land. The Dieticians Board<sup>17</sup> noted: “Māori as Tangata Whenua hold a unique place in our country.” Some competencies referenced the importance of relationships with Māori, and others extended their reference to include relationships with iwi (tribes), hapū and whānau (extended family). The Occupational Therapy Board explicitly refer to the identification of OT’s role in “in building and sustaining relationships with whānau, hapū, iwi, Māori organisations and tangata whenua as a whole.”<sup>18</sup>

#### Article 1

*Mechanisms to ensure equitable participation and/or leadership*

It was often unclear from the core competency documents how Māori were involved

in competency development and/or in leadership of professional bodies.

#### Article 2

*Evidence of Māori values influencing the competencies*

Some of the competency documents specifically referenced the importance of tikanga (Māori protocol) and Māori health models. The competency documents rarely included key Māori concepts such as manaakitanga (to care for), tika (doing things the right way), pono (to act with integrity) or aroha (love). Some recognised the importance of whānau groupings to Māori.

#### Article 3

*Evidence of Māori exercising their citizenship as Māori*

The Occupational Therapy Board<sup>18</sup> recognised the “history, cultures, and social structures influencing health.” Several competency documents noted a requirement to be committed to the pursuit of positive Māori health outcomes.

#### Article 4

*Acknowledgement of the importance of wairua, rongoā and wellbeing*

Wairua and spiritual wellbeing were mentioned in the context of the Māori health model Te Whare Tapa Whā.<sup>1</sup> Rongoā was rarely mentioned.

### Phase three: competency determination

The CTA determination (Table 2) was based on the information presented in the

**Table 1:** Critical te Tiriti Analysis indicators.<sup>15</sup>

Domain	Critical te Tiriti Analysis indicator
Preamble	Elements showing that te Tiriti is central and Māori are equal or lead parties
Article 1: Kāwanatanga	Mechanisms to ensure equitable Māori participation and/or leadership in setting priorities, resourcing, implementing and evaluating
Article 2: Tino rangatiratanga	Māori are able to express their tino rangatiratanga; have influence and hold authority
Article 3: Ōritetanga	Evidence of Māori values influencing and holding authority
Article 4: Wairuatanga	Acknowledgement of the importance of wairua (spirit), rongoā (Māori medicine) and wellness

competency documents. We applied the CTA assessment criteria in the following ways:

- Poor: The competency documented substantially failed to transparently address the indicator.
- Fair: The core competencies have vague engagement with the indicator (eg, acknowledgement of culture).
- Good: The competencies appear to deliberately and consciously address the criteria (eg, acknowledgement of tikanga).
- Excellent: The core competencies clearly achieve the indicator (eg, acknowledgement of power-sharing).

The chiropractic,<sup>19</sup> medical radiation technology<sup>20</sup> and physiotherapy<sup>21</sup> core competencies cover both Australia and Aotearoa and contain no evidence of Māori input into their development. Similarly, the osteopathic competencies<sup>22</sup> were developed by Australian academics. Te Ao Mārama (the Māori Dental Association) is mentioned in the dental competencies<sup>23</sup> but without clarification of their input. The core competencies of the dietitians<sup>17</sup> were developed by an expert working group with Māori representation. Likewise, a designated committee of the Psychologists Board<sup>24</sup> developed their competencies, although Māori input into that process is unclear. The Medical Sciences Council<sup>25–26</sup> and the Medical Council<sup>27</sup> regularly review competencies they administer, which includes an undefined public consultation process. The Midwifery Council,<sup>28</sup> Nursing Council,<sup>29–31</sup> Optometrist and Dispensing Opticians Board,<sup>32</sup> Social Workers Registration Board,<sup>33</sup> Podiatry Board,<sup>34</sup> Psychotherapists Board,<sup>35</sup> Pharmacy Council<sup>36</sup> and Occupational Therapy Board<sup>18</sup> offer no detail of how they developed their competencies.

Those practitioner competencies that scored ‘excellent’ when assessed against the preamble<sup>18,21,24,29–31,36</sup> did so due to in part to the requirement for practitioners to demonstrate relevant application of te Tiriti/Treaty in their practice. Each also acknowledged Māori as partners. The Pharmacy Council<sup>36</sup> in particular articulated the importance of te Tiriti for practitioners, by emphasising that:

*“Learning about the impact of pre- and post-Te Tiriti o Waitangi events on the health of New Zealanders and*

*developing working relationships with key Maori stakeholders e.g. Iwi / Hapū -/ Whānau / Māori organisations, where appropriate, will provide background to help improve Māori health outcomes. This extends to understanding the contemporary application of Te Tiriti o Waitangi.”*

The Pharmacy Council also provided a clear acknowledgement of the importance of Māori models of health and practices, such as tikanga and kawa, in contributing to improved relationships and health outcomes, which contributed to their excellent score for the Article 4 indicator.

## Discussion

### Phase four: strengthening practice

The WAI 2575 report<sup>12</sup> gave the health sector a collective ‘D grade’ for our failure to perform in relation to Māori health. To deliver health services effectively, health practitioners need to have the necessary clinical, cultural and political skills to engage effectively with whānau. Following on from the work of Heke, Wilson and Came,<sup>14</sup> which highlighted the need to strengthen and synthesise cultural competencies, this study suggests that existing professional competency documents are not yet fit for purpose as frameworks for upholding te Tiriti.

A te Tiriti-compliant health sector requires legislation, policy, competency documents, standards, codes of ethics and relevant supplementary documents to explicitly uphold te Tiriti. Individuals, teams, disciplines and organisations would all be held accountable for their inaction and action. Competencies could have explicit statements about knowledge and understanding of the cultural, historical, political and social context of Aotearoa, including the importance of te Tiriti o Waitangi and He Whakaputanga o te Rangatiratanga o Nū Tirenī (the New Zealand Declaration of Independence). The Pharmacy Council integrated into their competencies the importance of understanding and being able to describe the relevance of te Tiriti while also understanding Māori perspectives of health and the ability to incorporate strategies to address disparities.<sup>36</sup> Similarly, the Physiotherapy Board requires the ability to “demonstrate contemporary application

**Table 2:** Regulated health professions mapped against articles of the Māori text (te Tiriti).

Occupational group	Preamble	Article 1: Kāwanatanga (governance)	Article 2: Tino rangatiratanga	Article 3: Ōritetanga	Article 4: Wairuatanga	Score
Nursing	Excellent	Good	Good	Good	Good	12
Pharmacy	Excellent	Fair	Good	Fair	Excellent	10
Social workers	Good	Poor	Good	Good	Good	10
Physiotherapy	Excellent	Good	Fair	Good	Fair	9
Psychology	Excellent	Fair	Fair	Fair	Good	8
Midwifery	Good	Fair	Good	Fair	Good	8
Dietitians	Good	Fair	Good	Poor	Good	7
Occupational therapy	Excellent	Fair	Fair	Fair	Fair	7
Dentistry	Good	Fair	Poor	Good	Fair	6
Podiatry	Good	Poor	Fair	Fair	Fair	5
Medical science technicians	Good	Poor	Fair	Poor	Fair	4
Medical radiation technologists	Fair	Poor	Poor	Poor	Good	3
Medicine	Poor	Fair	Poor	Poor	Fair	2
Psychotherapy	Fair	Poor	Poor	Poor	Fair	2
Chiropractic	Poor	Poor	Poor	Poor	Fair	1
Osteopath	Poor	Poor	Poor	Poor	Poor	0
Optometrists/ dispensing opticians	Poor	Poor	Poor	Poor	Poor	0

Poor: 0. Fair: 1. Good: 2. Excellent: 3.



of te Tiriti principles and the incorporation into practice of the four cornerstones of health.<sup>21</sup> Berghan, Came, Doole, Coupe, Fay, McCreanor and Simpson<sup>5</sup> have argued that upholding te Tiriti requires three key elements: (i) whakawhanaungatanga (the active making of relationships with Māori), (ii) tauīwi (settler people) consciously becoming an ally with Māori in the pursuit of racial justice and (iii) actively engaging in decolonisation or power-sharing. The Occupational Therapy Board and Pharmacy Council both begin to articulate these elements in statements that detail meeting and developing relationships with the Māori health, welfare and education workforce<sup>18</sup> and practising whanaungatanga to build relationships and trust with key partners.<sup>36</sup> These complex processes may not be captured seamlessly in a traditional competency document. However, this difficulty doesn't mean that competency development shouldn't attempt a deeper engagement with the five domains of the Māori text.

Table 3 offers some specific ideas for te Tiriti competencies that could be refined and integrated into core competency documents. These competencies could be tailored into professional development plans for individual practitioners or teams, recognising pre-existing expertise. The competencies could be staircased into preliminary, secondary and advanced competencies, similarly to the Pharmacy Council's competency structure, which includes a continuum of professional development.<sup>36</sup>

As a methodological note, we acknowledge that the decision to use only core competency documents in our analysis may not reflect well for those professions who handle te Tiriti and/or the Treaty and/or Treaty principles differently. We note that all reviewed professions, except osteopaths

and social workers, have separate cultural competencies where references to te Tiriti and/or the Treaty might have been more prolific. However, we argue that the rightful position of te Tiriti in health is at the core, not on the periphery.

### Phase five: Māori final word

For Māori, health is a complex concept that incorporates elements of health, vitality and wellbeing as well as illness, disease and malaise. These all occur within the contexts of connection to each other, ancestors and the environment, with the whole package being acknowledged as taonga. Māori health aspirations are effectively captured within the text of te Tiriti o Waitangi, including Māori leadership and agency, practices that centre the Māori worldview and the valuing of Māori approaches to health and wellbeing.

Health professionals occupy intimate spaces in Māori lives, as they do with all citizens, whether they are promoting good health, protecting communities and individuals from poor health or caring for the sick. It is vital that the work of health professionals is aligned with the full health aspirations of Māori as outlined in te Tiriti.

This analysis of competency documents of regulated health professionals has highlighted the various ways different professional groups have incorporated te Tiriti into their practice. The majority of the professions are not meeting their obligations as a Crown Tiriti partner. It is not a stretch to posit that this is a contributing factor to the poor health outcomes and racism that Māori experience when seeking healthcare. The current competency documents clearly show that Māori health aspirations and te Tiriti obligations are not being considered, much less achieved, in Aotearoa.

**Table 3:** Possible te Tiriti o Waitangi competencies for tauwiwi.<sup>5</sup>

Domain	Knowledge	Skill
Preamble	<ul style="list-style-type: none"> <li>Be familiar with mana whenua (local hapū/iwi), mātāwaka (kinship group not mana whenua), hapū and iwi in your rohe (district) and their history.</li> <li>Understand the cultural lens (and/or white privilege) that you bring to your professional life.</li> </ul>	<ul style="list-style-type: none"> <li>Be proficient in whakawhanaungatanga (active relationship building).</li> <li>Have a positive collegial relationship with Māori colleagues in your profession/workplace.</li> <li>Have a warm professional collaboration with Māori health providers in your district and/or field.</li> <li>Be proficient in building and maintaining mutually beneficial power-sharing relationships.</li> </ul>
Article 1: Kāwanatanga	<ul style="list-style-type: none"> <li>Be familiar with te Tiriti o Waitangi and He Whakaputanga o te Rangatiratanga o Nū Tīreni.</li> <li>Be familiar with WAI 2575.<sup>12</sup></li> <li>Understand the principles of structural (power) analysis.</li> </ul>	<ul style="list-style-type: none"> <li>Be proficient in reflective practice and active listening.</li> <li>Tautoko (support) Māori leadership.</li> <li>Prioritise Māori voices.</li> </ul>
Article 2: Tino rangatiratanga	<ul style="list-style-type: none"> <li>Understand the importance of kaumātua (elders).</li> <li>Be familiar with Māori health leaders, Māori health history and contemporary literature.</li> <li>Be familiar with Māori aspirations in relation to health.</li> <li>Have a basic/intermediate understanding kaupapa Māori (Māori philosophical) approaches.</li> </ul>	<ul style="list-style-type: none"> <li>Be primed to challenge racism and unconscious bias.</li> <li>Advocate for te Tiriti compliance at all levels.</li> <li>Trust Māori intelligence.</li> </ul>
Article 3: Ōritetanga	<ul style="list-style-type: none"> <li>Understand the historical and contemporary determinants of Māori health.</li> <li>Understand the intergenerational impact of historical trauma.</li> </ul>	<ul style="list-style-type: none"> <li>Be clinically and culturally confident to work with Māori whānau</li> <li>Be proficient in strengths-based practice.</li> <li>Be proficient with equity analysis.</li> <li>Critically monitor the effectiveness of your work with Māori.</li> </ul>
Article 4: Wairuatanga	<ul style="list-style-type: none"> <li>Have a basic/intermediate understanding of te reo Māori (Māori language).</li> <li>Have a basic/intermediate understanding of the tikanga and the application of tapu (sacred) and noa (made ordinary).</li> <li>Be familiar with Māori health models such as Te Pae Mahutonga<sup>37</sup> and Te Ara Tika.<sup>38</sup></li> <li>Have a basic/intermediate understanding of marae (community meeting house) protocol.</li> <li>Understand your own whakapapa (genealogy and connections).</li> </ul>	<ul style="list-style-type: none"> <li>Practice cultural humility.</li> <li>Be confident to perform waiata tautoko (support song).</li> <li>Integrate tika (correct), pono (truth), aroha and manaakitanga into your practice.</li> <li>Be open-hearted.</li> </ul>

**Competing interests:**

Nil.

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Thanks to the hard-working practitioners who pulled together their professional competency documents. We wish you well in the ongoing efforts to refine and improve these documents so te Tiriti o Waitangi can be upheld and anti-racism praxis be normalised.

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