



**NZ
Human
Rights.**

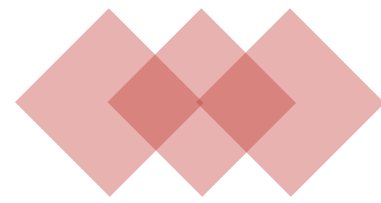
Te Kāhui Tika Tangata
Human Rights Commission

He huarahi tika tangata me Te Tiriti o Waitangi ki te Anga Tiaki Covid-19 e tūtohu ana mō Aotearoa

A human rights and Te Tiriti o Waitangi approach to Aotearoa New Zealand's proposed Covid-19 Protection Framework

General Conditions Briefing: upholding human
rights protections under Aotearoa's proposed
Covid-19 Protection Framework

November 2021



Overview

Purpose

The Protection Framework incorporates multiple elements, and this initial briefing assesses the human rights and Te Tiriti implications and provides general recommendations.

These statements are intended to aid public understanding about the impact on their human rights, presented in a simple and accessible format. They are also published as guidance for policy-makers and parliamentarians as legislation to support the new Covid-19 Protection Framework is tabled and implemented.

The information has been drawn from an analysis of recent complaints to the Human Rights Commission, which have more than doubled since the appearance of the Delta variant three months ago. The Briefings also come after careful assessment of all arguments in terms of the respective issues, and after seeking advice from outside the Commission on specific issues.

At the most fundamental level, wellbeing, human rights and Te Tiriti o Waitangi must lie at the heart of the policies and laws that establish and govern the Government's response to Covid-19. The International Bill of Human Rights¹ and the UN Declaration on the Rights of Indigenous Peoples underpin this approach. Recognition that efforts to address health and other disparities affecting Māori are unlikely to be effective if they are not real partnerships upholding Māori tino rangatiratanga, are clearly vital to any response to Covid-19.

Human rights in a public health emergency

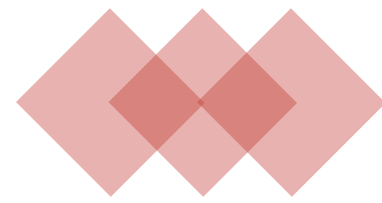
Under human rights law some rights can be limited by public health measures which respond to the outbreak of a disease posing a serious threat to the health of a population.² Also, balances have to be struck between competing human rights. In the context of COVID-19, for example, a balance has to be struck between the rights to life, healthcare and health protection, on the one hand, and the rights to work, assembly and movement, on the other.

International human rights law principles set out when and how public health measures may limit rights.³ Such measures must be specifically aimed at preventing disease. They must also be provided for, and carried out in accordance with, the law and be strictly necessary in a democratic society to achieve their objective. They must be

¹ The International Bill of Rights is the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

² Our own domestic human rights law enables rights to be limited under the provisions of the New Zealand Bill of Rights Act 1990. Also see Footnote 2 above: *Four Aviation Security Service Employees v Minister of COVID-19 Response* [2021] NZHC 3012 at [24] and [143].

³ The [Siracusa Principles 1984](#) in particular clauses 25 and 26; see also the UN Human Rights Committee *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*, CCPR/C/128/2 (24 April 2020)



proportionate, reasonable, non-discriminatory, and subject to independent review. There must be no less intrusive and restrictive means available to reach the public health objectives. They must also be based on scientific evidence.⁴ Additionally, public health resources must be mobilised in the most equitable manner and should prioritise the needs of marginalised or vulnerable groups.⁵

These principles provide a check on limitations imposed on human rights. They also provide guidance on assessing whether balances between competing rights are fair and reasonable.

General conditions

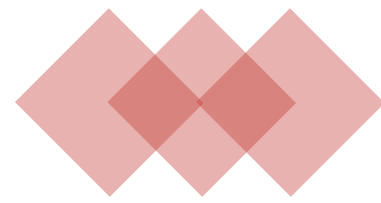
Adherence to a human Rights and Te Tiriti based approach requires that all measures implemented as part of the Covid-19 Protection Framework must be accompanied by the following general conditions:

- a. The application of restrictions on rights mandated under any policy and law must be proportionate to the immediate risk to public health. They must be the least restrictive in the circumstances in order to meet public health objectives.
- b. Restrictions of any kind on rights must not be in place any longer than is strictly necessary. They should be removed as soon as risks to public health and the capacity of the health system can be adequately managed without them. The criteria for removal should be clearly articulated to the public.
- c. Fundamental obligations as a Te Tiriti partner must be upheld by the Crown to ensure a real and substantive partnership with equitable and shared decision-making present in all Crown-Māori relationships.
- d. Timely dissemination of all information relating to decision-making processes around restrictions is vital, and should include understandable, transparent and accessible communication to all New Zealanders of any restrictions, which must be clearly and directly based on appropriate legislation.
- e. Explicit recognition of human rights and Te Tiriti should be evident in all key policy statements and government communications in relation to the Covid-19 Protection Framework.
- f. Additional investment and priority must be given to ensure public health resources are targeted towards increasing the vaccination rates among Māori and boosting the accessibility of health care services for Māori who may become ill from Covid-19. All such initiatives must be developed in partnership with iwi, hapū and whānau.⁶

⁴ The Siracusa Principles as summarised by the [World Health Organisation](#), see also *Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights* by the Committee on Economic, Social and Cultural Rights, E/C.12/2020/1 (6 April 2020) at 10-12

⁵ *Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights* by the Committee on Economic, Social and Cultural Rights, E/C.12/2020/1 (6 April 2020) at 14

⁶ The New Zealand Government's COVID Māori vaccination fund reflects this need – See <https://www.beehive.govt.nz/release/new-fund-accelerate-m%C4%81ori-vaccinations>.



- g. Other vulnerable population groups must also be given priority to ensure health resources are targeted towards those who face current health system inequities, including Pacific people and disabled people.⁷
- h. Challenges to Government decisions must be available to all through appropriate and easily accessible appeal or review processes.
- i. Privacy laws and relevant privacy legislation must be consistently respected in the use of all measures and implementation of all associated systems.
- j. Regular review of all legislation authorising the use of any mandated restrictions must be in place, with all such measures strictly timebound.
- k. A human rights and Te Tiriti approach places responsibilities on central and local government, and those in positions of power. Additionally, all individuals have responsibilities. For example, to avoid stereotyping and discrimination, to support health professionals and care givers, to be respectful of others and, when necessary, to socially distance, wear facemasks, and get tested. Freedom of expression and assembly must be respected and exercised without violence, racism, or discrimination. Advocacy must be responsible and based on reliable evidence.

Conclusion

Human rights sometimes require a balancing of competing rights. Also, human rights may sometimes be subjected to lawful limitations. These complex and sensitive issues are relevant to the Covid-19 Protection Framework. In these statements, we introduce some of the human rights and Te Tiriti issues arising from the Protection Framework. The statements are not comprehensive; they are as accessible as

possible. We hope they may help members of the public, parliamentarians, policy makers and those who have to apply the Protection Framework in practice. We expect to refine the existing statements and add new ones as we assess the different dimensions of the country's unfolding response to the global pandemic.

⁷ The issues vary for different vulnerable groups. Disabled people feel discriminated against due to mask exemptions and require support when shopping. Pacific people are more susceptible to Covid-19 due to proximity to South Auckland, making up a higher proportion of essential service workers, and existing health inequities.



**NZ
Human
Rights.**

Te Kāhui Tika Tangata
Human Rights Commission