



**NZ  
Human  
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Te Kāhui Tika Tangata  
Human Rights Commission

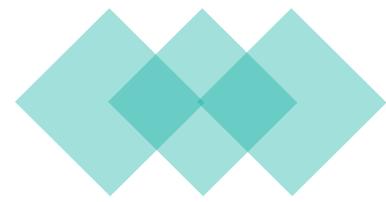
# He Tika Tangata me Te Tiriti o Waitangi Rārangi Arowhai Kaupapahere mō Covid-19

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## A Human Rights and Te Tiriti o Waitangi Policy Checklist for Covid-19

### Policy Guidance

November 2021



# Human rights and Te Tiriti o Waitangi Policy considerations for Covid-19

## Purpose

Internationally, governments have had to develop legislation and policies in a fast-paced and rapidly changing Covid-19 environment. This is a complex undertaking. As the Director-General of the World Health Organisation has observed, “since the onset of COVID-19, all countries have had to strike a fine balance between protecting health, minimising economic and social disruption, and respecting human rights”.<sup>1</sup>

In Aotearoa, New Zealand, we have a unique context and obligations. As such, we have developed this first iteration of a Human rights and Te Tiriti o Waitangi Policy checklist<sup>2</sup>. It is intended to assist decision-makers, policy makers and others check their decisions and analysis against a set of human rights and Te Tiriti-based criteria. The criteria we have set out are informed by a range of international and domestic human rights and Te Tiriti sources. They are meant to augment, rather than replace, other policy tools you use to promote the enhancement of human rights and Te Tiriti approaches.

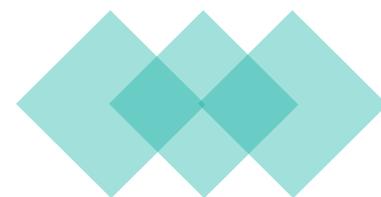
## Te Tiriti o Waitangi

Adherence to Te Tiriti o Waitangi is essential. As the Waitangi Tribunal has found, “Tino rangatiratanga of hauora Māori is necessary to pursue health equity. Tino rangatiratanga of hauora Māori will not be possible without more active support from the Crown”<sup>3</sup>

## Balancing rights and responsibilities

Most rights are not absolute and may require short-term limitations, for example, during a public health emergency. Additionally, competing rights must be balanced. In the context of COVID-19, balance must 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. A human rights approach requires careful consideration of limitations and balances, and they must be reasonable, proportionate and based on clear, accessible law<sup>4</sup>

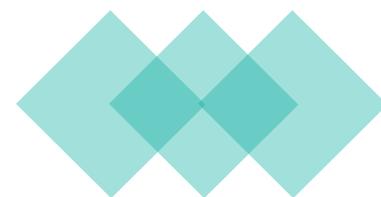
However, as the UN Committee on Economic, Social and Cultural Rights has held upholding the right to health is closely related to and dependent upon the realisation of other human rights, as contained in the International Bill of Rights. These include the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, privacy, access to information, and the freedoms of association, assembly and movement.”<sup>5</sup>



Human Rights Principle	Checklist criteria
<p><b>Proportionality</b> Covid-19 Public health measures (Covid-19 measures) that limit rights must be reasonable in the circumstances and proportionate to the public health risks.</p>	<ul style="list-style-type: none"> <li>- Covid-19 measures must be the least restrictive available in order to meet the public health objectives.</li> <li>- Discretion is available in individual cases where Covid-19 measures cause undue hardship.<sup>6</sup> This includes equity considerations for various groups disproportionately affected by COVID-19 and related impacts, such as tangata whenua Māori, disabled, Pacific peoples, refugee, migrant, homeless, youth and rainbow.</li> </ul>
<p><b>Legality</b> Covid-19 measures that limit rights must be based in law that is clear and accessible, and subject to independent review.</p>	<ul style="list-style-type: none"> <li>- Covid-19 measures are established in legislation and are subject to the scrutiny and regular review of Parliament. A transparent process for review must be communicated.</li> <li>- Human rights and Te Tiriti must underpin and be expressly recognized in all key government communications and policy statements and decisions in relation to the Covid-19 Protection Framework.</li> <li>- That the law and policy establishing Covid-19 measures should be publicly available in a variety of accessible formats, including a wide array of languages as soon as practicable.</li> <li>- Covid-19 measures are subject to timely and accessible independent legal review by the courts, the Ombudsman and other independent authorities.<sup>7</sup></li> </ul>
<p><b>Necessity</b> Covid-19 measures that limit rights must be strictly necessary to meet their objective.</p>	<ul style="list-style-type: none"> <li>- Covid-19 measures are based on the best available scientific evidence.</li> <li>- Covid-19 measures must not be in place any longer than is strictly necessary and are subject to removal as soon as the capacity of the health system can be adequately managed without them.</li> <li>- The criteria for the removal of Covid-19 measures is clearly articulated to the public.</li> <li>- Covid-19 measures are time-bound in law and subject to regular, transparent evaluation and review processes.</li> </ul>



Te Tiriti o Waitangi	Checklist criteria
<p><b>Tino Rangatiratanga</b> Requires that Māori lead the Covid-19 public health response for Māori.</p>	<ul style="list-style-type: none"> <li>- Iwi, hapū and whanau, through their own health or social services authorities/organisations, lead Covid-19 measures and solutions for Māori.<sup>8</sup></li> <li>- Resources and funding are available and policies co-designed to ensure Māori health or social services authorities/organisations have the capacity and necessary health sector space to deliver Covid-19 public health measures and solutions for Māori.<sup>9</sup></li> </ul>
<p><b>Kāwanatanga: Partnership</b> Government and Māori work together in equal partnership to develop Covid-19 measures.</p>	<ul style="list-style-type: none"> <li>- All measures, initiatives and decisions made under the Covid-19 Protection Framework are made in partnership with iwi, hapū and whanau and their representative authorities/organisations.<sup>10</sup></li> <li>- All decisions under the Covid-19 Protection Framework must be consistent with the Government's obligations under Te Tiriti o Waitangi.<sup>11</sup></li> </ul>
<p><b>Kāwanatanga: Active protection</b> Requires the Government to ensure that the rights of Māori are actively promoted and protected in the Covid-19 public health response.</p>	<ul style="list-style-type: none"> <li>- Priority is given to increase the vaccination rates among Māori and boosting the accessibility and capacity of health care services for Māori who may become ill from Covid-19.<sup>12</sup></li> <li>- A tikanga lens is applied to all decisions in assessing the legal and policy decisions made under the Covid-19 framework.<sup>13</sup></li> </ul>
Social Cohesion and Wellbeing	Checklist criteria
<p>Social cohesion and wellbeing is promoted through the active protection of all human rights, including workers, social and cultural rights throughout the covid-19 response.<sup>14</sup></p>	<ul style="list-style-type: none"> <li>- That employment laws/policies are implemented to ensure job losses are minimised, including for those who are not vaccinated (including through alternative measures such as regular testing, work from home requirements or temporary suspensions with guaranteed reinstatement).</li> <li>- That social security supports are readily available for those who have lost work and require immediate income support (usual stand-down times are waived).</li> <li>- That social security supports include immediately accessible rent relief or housing support.</li> <li>- Access by all to social services, including all public health and education services, is actively maintained.</li> <li>- Access to and enjoyment of community and cultural events and public parks and facilities is available to all and only restricted when strictly necessary to limit risks to public health.</li> </ul>



<p><b>Inclusivity and non-discrimination</b></p> <p>Social cohesion and wellbeing is supported through covid-19 measures that promote equality and inclusivity.</p>	<ul style="list-style-type: none"><li>- Resources are targeted towards those who face current health system and social sector inequities, including Pacific people and disabled people.<sup>15</sup></li><li>- Access to all covid-19 public health measures, such as vaccination, testing, vaccine passes and medical exemptions is equitable and non-discriminatory.<sup>16</sup></li><li>- Verification processes should accommodate those who have difficulty obtaining proof of identity documentation or overseas identity documentation.<sup>17</sup></li><li>- Government public communications and provision of information regarding covid-19 measures is timely, transparent, accessible and non-stigmatising.<sup>18</sup></li></ul>
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<sup>1</sup> Statement from WHO Director-General on COVID-19 (11 March 2020)

<sup>2</sup> The human rights principles and criteria set out in this checklist is based on a range of international human rights authorities, including Office of the High Commissioner for Human Rights (OHCHR), [Emergency Measures and COVID-19: Guidance](#), 27 April 2020; The [UN Siracusa Principles](#), as summarised by the [World Health Organisation](#); *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)

<sup>3</sup> Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 160.

<sup>4</sup> Human Rights Commission, *Balancing and Limiting Rights*, [Kōrero Whakamauāhara: Hate Speech](#), December 2019 at p8

<sup>5</sup> CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) (11 August 2000)

<sup>6</sup> see *Christiansen v Director-General of Health* [2020] NZHC 887, 4 May 2020 at [47]

<sup>7</sup> See *Four Aviation Security Workers v Minister of COVID-19 Response* [2021] NZHC 3012, 8 November 2021, at [24]

<sup>8</sup> Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019). See also, *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: indigenous peoples and the right to self-determination*, Report of the UN Expert Mechanism on the Rights of Indigenous Peoples, 4 August 2021, A/HRC/48/75; UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 11 August 2000, at para27

<sup>9</sup> Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019)

<sup>10</sup> *Te Pou Matakana Ltd v Attorney-General* [2021] NZHC 2492 at [114]

<sup>11</sup> *Te Pou Matakana Ltd v Attorney-General* [2021] at [112] and [135(c)]

<sup>12</sup> See *Right to health and indigenous peoples with a focus on children and youth*; Study by the Expert Mechanism on the Rights of Indigenous Peoples, 10 August 2016, A/HRC/33/57 at 10; Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 11 August 2000, at paras 18 and 27

<sup>13</sup> *Te Pou Matakana Ltd v Attorney-General* [2021] at [134]

<sup>14</sup> *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

<sup>15</sup> Chairs of treaty bodies - *UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19* (24 March 2020), see also UN Committee on the Elimination of Racial Discrimination, *Statement on the coronavirus (COVID-19) pandemic and its implications under the International Convention on the Elimination of All Forms of Racial Discrimination* (7 August 2020); UN Committee on the Rights of Persons with Disabilities, *Statement on COVID-19 and the human rights of persons with disabilities* (9 June 2020); Committee

<sup>16</sup> CESCR - *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 see also HRC, [Special Conditions Briefing, upholding human rights protections in the use of vaccination certificates](#)

<sup>17</sup> *ibid*

<sup>18</sup> UN Human Rights Committee - *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*, CCPR/C/128/2 (24 April 2020)



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