A critical Tiriti analysis of Te Pae Tata: the Interim New Zealand Health Plan

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ABSTRACT

The current health reforms in Aotearoa New Zealand are being described as "transformational". Political leaders and Crown officials maintain the reforms embed a commitment to Te Tiriti o Waitangi, address racism and promote health equity. These claims are familiar and have been used to socialise previous health sector reforms.

This paper interrogates claims of engagement with Te Tiriti by undertaking a desktop critical Tiriti analysis (CTA) of Te Pae Tata: the Interim New Zealand Health Plan. CTA follows five stages from orientation, close reading, determination, strengthening practice, to the Māori final word. The determination was done individually and a consensus was negotiated from the indicators; silent, poor, fair, good, or excellent.

Te Pae Tata proactively engaged with Te Tiriti across the entirety of the plan. The authors assessed Te Tiriti elements of the preamble, kāwanatanga and tino rangatiratanga as "fair", ōritetanga as "good" and wairuatanga as "poor".

Engaging more substantively with Te Tiriti requires the Crown to recognise that Māori never ceded sovereignty and treaty principles are not equivalent to the authoritative Māori text. Recommendations of the Waitangi Tribunal WAI 2575 and Haumaru reports need to be explicitly addressed to allow monitoring of progress.

The publicly funded health system in Aotearoa New Zealand is currently experiencing the largest reforms in a generation. The Health and Disability System Review[1] identified concerns about equity, efficiency, financing and sustainability across the entire health system. These concerns were amplified by the Waitangi Tribunal[2] through the Health Kaupapa Inquiry (WAI 2575). They recommended overhauling the primary healthcare system and creating a stand-alone Māori Health Authority.

The reforms were enabled through the Pae Ora (Healthy Futures) Act 2022. This legislation centralised publicly owned health services and established Te Whatu Ora (Health New Zealand), Te Aka Whai Ora (Māori Health Authority) and the Public Health Agency, all of which report to the reconfigured Minister of Health.

Te Tiriti o Waitangi is the foundational document of the colonial state of New Zealand that articulates the relationship between the Crown and hapū (sub-tribes).[3] Te Tiriti comprises of five elements: the preamble, three written articles and an oral article. These elements express the responsibility of the Crown to govern non-Māori, reaffirm Māori tino rangatiratanga (self-determination and authority) as articulated in He Whakaputanga o Te Rangatiratanga o Nū Tīreni (the Declaration of Independence). Te Tiriti also granted Māori the same rights and privileges as British subjects and granted religious and cultural freedom. The Waitangi Tribunal[4] has confirmed rangatira (chiefs) did not cede sovereignty in negotiating Te Tiriti. However, ethnic health inequities[5] continue to occur, fuelled by ongoing breaches of Te Tiriti.[2]

The creation of new health entities will not necessarily address the cultural change required to transform a broken system or eradicate institutional racism.[6,7] Rae et al. (2022)[8] in their critical Tiriti analysis (CTA) of the Pae Ora (Healthy Futures) Bill showed fair engagement with most elements of Te Tiriti. There were promising shifts in power-sharing within the Bill but only partial fulfilment of Te Tiriti responsibilities. To date, the reforms have been the subject of only limited scholarly debate.[9]

Te Pae Tata is the first New Zealand Health Plan published under the Pae Ora legislation and outlines the first 2 years of operation.[10] This document is the opportunity for the New Zealand Government to articulate how they will engage with Te Tiriti after the WAI 2575 Waitangi Tribunal[2] report. Given the strategic importance of Te Pae Tata, this paper addresses a gap in the literature about how the current health reform documentation aligns with Te Tiriti.

Methods

CTA is a methodological approach that emerged from the experience of presenting evidence to the Waitangi Tribunal.[11] CTA is a desktop review of policy that provides no commentary on the mana of the document authors or the organisation that publishes it. Instead, it is a contribution to the ongoing critical reflection on policymaking with the intention to strengthen practice to improve health outcomes.

CTA is a collaborative process that involves five stages. Stage one is a high-level orientation to the identified policy document, observing how it talks about Te Ao Māori, Te Tiriti and equity. The second stage involves a close reading examining how the text addresses the five elements of the Māori text. In stage three the authors independently make a determination against a set of indicators adapted from the work of Came et al. (2020)[11] to then develop a collective assessment. Stage four offers constructive suggestions about how the document could be strengthened, drawing on literature and the expertise of the authors. CTA embeds Māori engagement throughout, but the fifth stage is when Māori author(s) make a final overall determination of the extent the document has engaged with Te Tiriti.

This CTA has been performed by Māori, Pasifika and Pākehā critical scholars with a background in public health and a commitment to racial justice and Te Tiriti. No ethical approval was required.

Results

Te Pae Tata: Interim New Zealand Health plan 2022[10] will henceforth be referred to as the Plan.

Stage one: orientation

The Plan was jointly developed by Health New Zealand and the Māori Health Authority with support from the Ministry of Health. There is a commitment to "*building a health system that embeds Te Tiriti o Waitangi as its foundation*" (p17). This involves putting Te Tiriti first, enacting Te Tiriti "principles and articles" to improve Māori health, changing how the system works to address "bias and discrimination", sharing leadership between the Crown and Māori for decision making and resources, and for whole of system accountability for Māori health equity (p17).

The Plan explicitly frames the responsibility for monitoring Te Tiriti obligations with the Māori Health Authority and Māori. The introduction states "(f)or Māori particularly we will embed Te Tiriti o Waitangi by growing Māori leadership, workforce and services" (p8). Furthermore, the plan prioritises actions "*Te Whatu Ora can take direct ownership of and which Te Aka Whai Ora will hold us to account for delivering*" (p77).

There are explicit attempts to ensure the visibility and application of Te Tiriti across the document, for example the provision of a table describing the application of Te Tiriti within the Plan, however, the Tiriti preamble is absent.

Stage two: close reading

Preamble

The Plan describes (p13) the special Māori-Crown relationship and the kaitiaki (stewardship) responsibility the Crown has assumed over the health system. The Crown presupposes the senior role in the relationship and paternalistically talks of enabling Māori to exercise authority so Māori can live and flourish as Māori. The Plan indicates the quality of Māori-Crown relationships will be measured over time by both parties.

The Plan was jointly developed but is situated within the Crown system. The Plan does not disclose where or how the independent sovereign voices of Māori are represented within this document. Hapū are the Tiriti partners of the Crown, but within the new health structures, hapū are frequently subsumed under iwi-partnership boards, which are themselves a Crown construct.

Kāwanatanga

The Plan references section 6 of the Pae Ora Act 2022 as to how it intends to give effect to its Te Tiriti obligations, referring to "*the principles of Te Tiriti as articulated by the courts and the Waitangi Tribunal*". It also references He Korowai Oranga (Māori health strategy),[12] which the Waitangi Tribunal (2019) found did not uphold Te Tiriti. The Plan notes the detail of how the Crown intends to meet the non-legislative recommendation of WAI 2575 in Whakamaua: Māori Health Action Plan.[13]

The Plan proposes establishing iwi-Māori partnerships, and that the Māori Health Authority will enhance Māori leadership within the health system. The Plan indicates the Māori Health Authority will have an important role in developing "*the next Hauora Māori Strategy in partnership with iwi, hapū, whānau and Māori communities*" (p13).

Tino rangatiratanga

The terms tino rangatiratanga, which is in

the Māori text of Te Tiriti, and mana motuhake (autonomy) are used once in the Plan. The use of the term "their" in relation to Māori across the document implies authorship lies with non-Māori. Although it is unclear how Māori influenced the Plan and its priorities, the mechanism iwi-Māori partnership offers may enable local expressions of tino rangatiratanga. It is unclear how collective Māori aspirations will be achieved at a national level other than through Crown entity the Māori Health Authority.

The Plan consistently speaks to the importance of mātauranga Māori. The Plan promises that iwi and hapū will have resources to develop health services to meet the health aspirations of their community. Yet, plans to address the historic under-investment in Māori health noted by the Waitangi Tribunal (2019) are absent. The measures of Māori wellbeing (p17) are rich in possibility if accountability measures are robust and monitored. The Māori Health Authority and Health New Zealand (two Crown entities) will measure performance and outcomes.

Māori leadership and health workforce participation are significant themes across the Plan and are critical to successful implementation. For Māori aspirations to be achieved, non-Māori will need to change. Education is one critical step, but this will need to be embedded in policy, practice and leadership.

Ōritetanga

Action on the wider determinants of health is critical to improving health equity, an area of public health that has historically lacked investment (WHO Commission on Social Determinants of Health, 2008). Limited detail is provided regarding how the social, cultural and commercial determinants of health will be addressed.

The Plan has a stated commitment to delivering high-quality "*culturally and clinically safe, effective, whānau-centred, accessible, timely and efficient care*" (p16). It articulates the importance of addressing racism, discrimination and ableism. However, details of how this will be realised are vague.

Wairuatanga

The Plan does not explicitly speak of wairuatanga or tikanga. The importance of rongoā services is occasionally mentioned.

Stage three: determination

Indicator 1 we assessed as "fair" due to the ongoing assumption that the Crown is the senior treaty partner and lacking a collective independent Māori national voice within the Plan.

Indicator 2 we rated "fair" because the Plan refers to treaty principles (rather than the Māori text alone) and although Māori were involved, it was unclear how and to what extent.

Indicator 3 we graded as "fair" due to the consistent theme of Māori leadership despite tino rangatiratanga being missing from the discourse.

Indicator 4 we rated "good" due to the significant emphasis on equity.

Indicator 5 we rated "poor" because of limited engagement with wairuatanga and tikanga.

Table 1: Critical Tiriti analysis determination of Te Pae Tata against indicators.

Critical Tiriti analysis indicators	Silent	Poor	Fair	Good	Excellent
Recognition that policy preserves Māori interests and contributes to peace and good order			x		
Evidence of Māori presence and leadership in kāwanatanga.			x		
Evidence of the influence of Māori chiefly authority, values and worldviews.			x		
Māori exercising the rights and privileges of citizenship.				x	
Recognition of wairuatanga and tikanga.		x			

Discussion

Stage four: strengthening practice

The Plan is explicit in its engagement with Te Tiriti (rather than the Treaty), naming this as a core priority and also identifying how other priorities will give effect to Te Tiriti. However, it also makes regular reference to Treaty principles. Te Tiriti is a one-page document that has existed since 1840, therefore the continuing obfuscation created by use of principles as interpretations of the original document should be abandoned. Direct engagement with the Māori text is required.

The crucial roles of the Māori Health Authority and iwi-Māori partnership boards in upholding Te Tiriti are named within the Plan. Importantly, these boards are structured to ensure hapū, as the Crown Tiriti partner, are at the decision-making table. Feedback from iwi-Māori boards about whether they can fulfil their roles and receive the required support is one measure of Te Tiriti engagement. It is important that Te Tiriti implementation and decolonisation of the health system is the responsibility of the entire health sector workforce and leadership.

Under WAI 1040 the Waitangi Tribunal[4] found Ngāpuhi never ceded their sovereignty. This has clear implications for leadership of the health system that are not addressed within the Plan. Māori leadership is required at all levels, from hapū to independent Māori leadership at a national level from within and outside of the Crown. How to implement WAI 1040 within the health sector should be addressed.

The Plan identifies that addressing racism and discrimination is crucial to Māori receiving quality health care. It also identifies the need for staff professional development on Te Tiriti, mātauranga Māori and "*taking steps to address bias in decision-making*".[14] Measures of this could specify targets (e.g., percentages of staff trained) at all levels of the health system including health leadership.

The Plan has gaps in several areas. For example, addressing the determinants of health is critical to successfully addressing health inequities; this important area of public health deserved more exploration within the Plan. The Plan is silent in relation to historic and contemporary breaches of Te Tiriti, for instance the systemic under-funding of Māori health. The addition of an appendix that explicitly shows how the Plan will address the recommendations of the WAI 2575 stage one report and the Haumaru Covid report[15] would strengthen accountability to Te Tiriti. To facilitate transparency in policy development we recommend the inclusion of a methodology section in the Plan, including references, to demonstrate the steps and people involved in its development.

Wairuatanga was not mentioned in the Plan. Mason Durie[16] has always argued that wairuatanga is central to hauora for Māori. Demonstrating a holistic view of health should explicitly include wairuatanga both in text and explanation through Te Āo Māori worldview concepts.

The limitations of, and future directions for, CTA

The critical Tiriti analysis process reviews a final policy document. What is not visible to the reviewers are the negotiations and decisions leading to the prioritisation about what gets included or excluded within the document. The intentions or aspirations of the authors are also unknown and remain hidden.[11] The future research priorities for CTA include the ongoing development of a community of learning through the establishment of a dedicated CTA website, and the consideration of how CTA can be used to prospectively inform the development of policies, curriculum and legislation.[17]

Conclusion

Stage five: Māori final word

Decolonisation often involves challenging and fundamentally altering the structures and systems that maintain the status quo and exert control.[18] While the Māori Health Authority may be able to mitigate harm to Māori, there is a risk of causing harm in the future if the leadership and strategy of the entire health system continue to follow similar patterns and approaches that have historically disadvantaged Māori. The true transformative potential of the Māori Health Authority will depend on its consistent ability to operate within this complex environment and influence the operationalisation and achievement of the health system with reference to documents such as Te Pae Tata.

It is important to approach iwi-Māori partnership boards as outlined within Te Pae Tata with a critical perspective. These boards operate within and are funded by a colonial power structure, and their connections to Pae Ora legislation are

defined, monitored and governed by the Crown. Given this, it is doubtful that mana motuhake and rangatiratanga as outlined in Te Tiriti will be achieved.

Notwithstanding the risk of the dismantling of the Māori Health Authority by subsequent governments, accountability for iwi-Māori partnership boards ought to include, reflect and fulfil the aspirations of hapū and whānau within their rohe. In the current era of multimillion-dollar post-settlement governance entities, partnership boards must be accountable for demonstrating their mandate to represent those they claim to serve while also serving as the Crown's preferred funding disbursement entity. It is important to find a balance between those iwi and entities that have been successful in the past, and hapū (or other iwi not recognised by Crown processes) that have the potential to be truly innovative. Lessons should be learned from brutal treaty settlement processes and their flawed voting, recognition practices and divide and rule tactics.[18] The Māori Health Authority, as a Crown agent, must navigate these challenges while also mandating, monitoring and governing its own people through the iwi-Māori partnership board recognition process.

COMPETING INTERESTS
Nil.

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