



# DRAFT CODE OF CONDUCT FOR OSTEOPATHS

A Critical te Tiriti Analysis

November, 2022

## TABLE OF CONTENTS

<i>Mihi</i> .....	2
<i>Introduction</i> .....	2
<i>Critical te Tiriti Analysis</i> .....	2
<i>Phase 1 – Orientation</i> .....	3
<i>Phase 2 – Close Examination</i> .....	3
Te Tiriti Preamble .....	3
Article 1 – Kāwanatanga .....	3
Article 2 – Tino Rangatiratanga .....	4
Article 3 – Ōritetanga.....	4
Wairuatanga.....	5
<i>Phase 3 – CTA Indicator Determination</i> .....	5
Indicator 1 (Preamble) – Elements showing that te Tiriti is central and Māori are equal or lead parties in the Draft Code’s development.....	5
Indicator 2 (Article 1) – Mechanisms to ensure equitable Māori participation and/or leadership in setting priorities, resourcing, implementing and evaluating the Draft Code.....	6
Indicator 3 (Article 2) – Evidence of Māori expressing their rangatiratanga influencing and holding authority in the Draft Code’s processes.....	6
Indicator 4 (Article 3) – Evidence of Māori exercising their citizenship as Māori in the Draft Code...	6
Indicator 5 (Wairuatanga) – Acknowledgement of the importance of wairua, rongoa and wellness in the Draft Code.....	6
<i>Phase 4 – Strengthening Practice</i> .....	7
Te Tiriti Preamble .....	7
Article 1 – Kāwanatanga .....	7
Article 2 – Rangatiratanga.....	7
Article 3 – Ōritetanga.....	8
Wairuatanga.....	8
<i>Phase 5 – Māori Final Word</i> .....	8
<i>Conclusion</i> .....	8

## MIHI

Tuia i runga, tuia i raro, tuia i roto, tuia i waho. Tuia ki te here tāngata. Ka rongo te pō, ka rongo te ao. Nau mai te ihi, te wehi, te wana. Kia puta ki te whei ao, ki te ao mārama tīhei mauri ora.

E ngā tini mate o te wā, haere okioki ki te tua i Paerau ki te Hao o Rua. Ka mutu, ki ngā waihotanga a rātou mā, ki ngā mana, ki ngā reo o te motu, nei rā te mihi kia koutou katoa.

Ka tuku i ngā mihi ki te Kaunihera Haumanu Tuahiwi o Aotearoa, nāu tēnei tuinga i tiritiria hei riro mai i ngā hua o te Tiriti o Waitangi mō ngā iwi, mō ngā hapu, me ngā whānau katoa puta noa o Aotearoa.

## INTRODUCTION

Under the Health Practitioners Competence Assurance Act 2003 (“the Act”) the Kaunihera Haumanu Tuahiwi o Aotearoa – Osteopathic Council of New Zealand (“the Council”) is the responsible authority that governs the practice of osteopaths. In accordance with section 118 of the Act, the Council is required to set standards of ethical conduct to be observed by osteopaths to protect the health and safety of health consumers.

In 2018, the development of a Code of Conduct was the focus of three regional conferences in Auckland, Wellington and Christchurch. There was general support during these engagements for adopting the Code of Conduct that had been developed for Te Kaunihera Tapuhi o Aotearoa – Nursing Council of New Zealand, with some changes that reflect osteopathic practice. In early 2020, the Council consulted on this initial Code of Conduct leading to the development of a version approved by Council and released in April 2020.

The Council, later in 2020, considered how they might better engage with te Tiriti o Waitangi (“te Tiriti”) and work towards becoming more responsive to Māori. A revised Code of Conduct was developed and consulted on which has led to the current Draft Code of Conduct for Osteopaths – October 2021 (“the Draft Code”). Following the review of all of the feedback received, the Council commissioned this report. The purpose of this report is to apply a Critical te Tiriti Analysis<sup>1</sup> (“CTA”) to the Draft Code providing a structured method of review to ensure the Draft Code is responsive to te Tiriti

## CRITICAL TE TIRITI ANALYSIS

CTA is a five-step process for policy-makers, decision-makers, advisory groups and interested citizens to strengthen and review public policy in relation to the articles and provisions of te Tiriti o Waitangi, specifically the Māori text signed in 1840.

CTA evaluates the strength of Māori participation in policy-making and the extent to which Māori aspirations and expectations are positioned to influence policy. CTA is led by Dr. Heather Came, a senior

---

<sup>1</sup> Came, H., O’Sullivan, D., & McCreanor, T. (2020). Introducing critical Tiriti policy analysis through a retrospective review of the New Zealand Primary Health Care Strategy. *Ethnicities*, 20(3), 434-456.

lecturer based at Auckland University of Technology's Taupua Waiora Centre for Maori Health Research.

The review process of CTA has five defined phases: (i) orientation; (ii) close reading; (iii) determination; (iv) strengthening practice and (v) Māori final word.

## **PHASE 1 – ORIENTATION**

*The objective of this phase is to read the Draft Code of Conduct to establish if, how, and why, it makes reference to te Tiriti o Waitangi, the Treaty of Waitangi, and/or the Treaty principles.*

The Draft Code includes amendments that acknowledges the Council's responsibilities, obligations and commitments to te Tiriti o Waitangi. There is reference and acknowledgement of the preamble, the three articles and the Ritenga Māori Declaration with further explicit descriptions of the articles and principles of te Tiriti that guide the Council and the osteopathic profession.

## **PHASE 2 – CLOSE EXAMINATION**

*The objective of this phase is to seek out evidence of engagement by the Draft Code of Conduct with all elements of te Tiriti o Waitangi.*

### **TE TIRITI PREAMBLE**

It is critical, in relation to the Preamble, to determine how te Tiriti commitments are represented within the Draft Code. In this case, the Draft Code acknowledges the role of te Tiriti (Preamble, Articles and Ritenga Māori declaration) as a major source for setting the constitutional make up of Aotearoa New Zealand.

- The Draft Code specifically acknowledges the Māori text of te Tiriti “as a gesture that recognises ngā iwi Māori and the history that brought two peoples together”. This distinction is important given that the Māori text differs from the English version on which the Crown has relied for its claim that the agreement was a cession of Māori sovereignty.
- The Draft Code explicitly describes the Articles and Principles of te Tiriti o Waitangi to guide the Council in its responsibilities, commitments and obligations to Māori as it fulfils its statutory role and functions.
- The Draft Code recognises the responsibility for the Council “to work with iwi and Māori to give effect to, and realise the promise of te Tiriti”, and in so doing, makes a commitment to form relationships with iwi and Māori “to progress this work”.

### **ARTICLE 1 – KĀWANATANGA**

In undertaking the Council's statutory role and function, Article 1 commits the Council to provide Māori an equitable and sovereign voice.

With regard to the development of the Draft Code, culturally appropriate and meaningful engagement by Māori has been provided for by the Council to some degree.

- External Māori advice has been sought to develop the Draft Code and to provide guidance to the Council to ensure the Draft Code is more responsive to the needs and aspirations of Māori.
- Consultation with the Council's membership has been undertaken providing members who also happen to be Māori the opportunity to provide written feedback. I note also that the 2018 Code of Conduct that informed the Draft Code emerged as a result of three regional conferences enabling ā-kanohi and in person engagement.
- In response to the feedback received, further Māori advice has been sought to undertake a Critical Tiriti Analysis. This has provided an in-depth review of the Draft Code to determine the extent to which it is consistent with te Tiriti o Waitangi.

## ARTICLE 2 – TINO RANGATIRATANGA

In a contemporary context, rangatiratanga is defined as the right for Māori to make decisions for Māori<sup>2</sup>.

Structural and process mechanisms that enable Māori to express rangatiratanga have been provided by the Council to some degree.

- The engagement actions described previously provide meaningful and expert Māori involvement in the drafting of the Draft Code to some degree.
- The decision-making power and authority ultimately reside with the Council, and this is described further in the fifth phase – Māori final word.

Māori scholarship in the Draft Code's development demonstrates the depth of Māori thought and expectation, and this has been provided for by the Council to a low degree.

- Principle 2, specifically sub-principle 2.1 of the Draft Code, accommodates Māori perspectives, histories, te reo (language) and tikanga (cultural practices). For example, consideration for including Māori models of health in everyday practice and care plans suggests mātauranga Māori as valid to providing for the health and wellbeing needs of Māori.
- A review of the Draft Code's reference list shows an absence of Māori scholarship suggesting little to no inclusion of Māori knowledge and perspectives in developing the Draft Code.
- The review process demonstrates that Māori knowledge and perspectives were not included from the outset, rather, Māori were afforded the opportunity to apply such perspectives and knowledge to an existing Code. This approach restricts Māori knowledge and perspectives within the existing paradigm and schema of the original Code.

## ARTICLE 3 – ŌRITETANGA

Ōritetanga recognises that te Tiriti guaranteed Māori the same rights and privileges of British Subjects, and now in our modern context, of New Zealand Citizenship. This means that the Council is responsible for enabling and achieving equitable health access, experience and outcomes for Māori through the statutory functions it is responsible for.

---

<sup>2</sup> Matike Mai, A. (2016). *The Report of Matike Mai Aotearoa—The Independent Working Group on Constitutional Transformation*. Auckland: *Matike Mai Aotearoa*.

The Draft Code acknowledges and outlines mechanisms to address inequities to a good degree.

- There is acknowledgement of the principle of Equity which requires the Council to “commit to achieving equitable health outcomes for Māori through the statutory functions that it is responsible for”.
- The Draft Code goes further to also recognise through the principle of Active Protection the need for the Council “to be well informed on the extent, and nature, of both Māori health outcomes and efforts to achieve Māori health equity through culturally safe standards and the practice of cultural safety”. This is important for both identifying the nature of inequity experienced by Māori, and the role that the Council and osteopaths play in achieving equitable health outcomes for Māori.

## WAIRUATANGA

The concept of wairuatanga (spiritual practices and wellbeing) recognizes that during the signing of te Tiriti in 1840, discussions were had regarding the protection of religious freedoms. Māori models of health are widely associated with the need to recognize Māori customs, practices and spirituality. The Draft Code addresses wairuatanga to a minimal degree.

- Whilst the Ritenga Māori Declaration is identified in the Draft Code’s introduction there is an assumption that the reader is aware of the Declaration and its relationship to the commitment to religious freedom and the expression of wairuatanga.
- Under the Guidance for Cultural Safety there is an acknowledgement that spiritual beliefs are a part of one’s culture. As a result, culturally safe, appropriate and acceptable osteopathic care must respond to the spiritual beliefs of others including Māori. This acknowledgement, however, could do more to recognise the special relationship that the Council should take with Māori under te Tiriti and thus the centrality of wairuatanga to forming care pathways for Māori.
- The acknowledgement of mātauranga Māori and Māori health models as important only assumes the inclusion and essential value of wairuatanga to the health needs of Māori.

## PHASE 3 – CTA INDICATOR DETERMINATION

*The objective of this phase is to determine the extent to which the Draft Code of Conduct meets a set of indicators that represent the five CTA domains outlined in Phase 2.*

### INDICATOR 1 (PREAMBLE) – ELEMENTS SHOWING THAT TE TIRITI IS CENTRAL AND MĀORI ARE EQUAL OR LEAD PARTIES IN THE DRAFT CODE’S DEVELOPMENT.

As the Draft Code was originally based on the Code of Conduct for nurses developed by Te Kaunihera Tapuhi o Aotearoa / Nursing Council of New Zealand, it is unclear to what extent Māori have participated in this formative document. While the Māori text of te Tiriti and the unique relationship with Māori is acknowledged, the evidence indicates that practically, Māori have retrospectively been prioritised and included in the development of the Draft Code. Māori appear not to have led from the outset. This has contributed to a FAIR score for this indicator.

**INDICATOR 2 (ARTICLE 1) – MECHANISMS TO ENSURE EQUITABLE MĀORI PARTICIPATION AND/OR LEADERSHIP IN SETTING PRIORITIES, RESOURCING, IMPLEMENTING AND EVALUATING THE DRAFT CODE.**

Seeking external Māori advice has evidenced Māori participation in developing the Draft Code and ensuring the health needs and priorities of Māori are included. The approach to engaging Māori could be improved to strengthen the quality and validity of Māori feedback. This indicator has been rated as FAIR.

**INDICATOR 3 (ARTICLE 2) – EVIDENCE OF MĀORI EXPRESSING THEIR RANGATIRATANGA INFLUENCING AND HOLDING AUTHORITY IN THE DRAFT CODE’S PROCESSES.**

Through greater Māori participation it is evident that attempts have been made to include Māori worldviews and approaches to the Draft Code’s development. However, it is also clear that mātauranga Māori and a tikanga-led approaches have not been foundational. This signals a cultural and intellectual bias that has compromised Māori influence, and restricted the potential for an alternative view of the Draft Code that is particular to Māori. A FAIR rating for this indicator is appropriate.

**INDICATOR 4 (ARTICLE 3) – EVIDENCE OF MĀORI EXERCISING THEIR CITIZENSHIP AS MĀORI IN THE DRAFT CODE.**

Māori have been afforded an opportunity to participate in the Draft Code’s development and actions have been taken to attempt to ensure this participation is equitable to the need required. There is clear acknowledgement and commitment to addressing health inequities for Māori. This is expressed through multiple Principles providing guidance to the Council and osteopaths. This indicator has been rated as GOOD.

**INDICATOR 5 (WAIRUATANGA) – ACKNOWLEDGEMENT OF THE IMPORTANCE OF WAIKUA, RONGOA AND WELLNESS IN THE DRAFT CODE.**

The acknowledgement and adoption of wairuatanga throughout the Draft Code is minimal. Often the opportunity for wairuatanga to be fully expressed and enabled fails to emerge and is hidden or assumed amongst other priorities. As such this indicator has been rated as POOR.

Indicators	Uncertain	Poor	Fair	Good	Excellent
1. Māori lead Code development			●		
2. Equitable Māori participation/leadership			●		
3. Evidence of inclusion of Māori epistemologies, approaches, and authority			●		
4. Māori exercising their citizenship				●	
5. Acknowledgement of wairuatanga		●			

## PHASE 4 – STRENGTHENING PRACTICE

*This objective of this phase is to consider how the Draft Code could be strengthened. The feedback presented below is structured in to the five CTA domains.*

### TE TIRITI PREAMBLE

- a) Make an explicit statement about the Council’s knowledge and understanding of the cultural, political and social context of Aotearoa, including He Whakaputanga o te Rangatiratanga o Nū Tireni (the New Zealand Declaration of Independence) in addition to te Tiriti o Waitangi; and, that the Council directly acknowledge the colonisation of Aotearoa.
- b) In the introduction, replace “**major**” with “**foundational**” acknowledging that te Tiriti o Waitangi is recognised as the founding document and treaty of Aotearoa New Zealand’s nationhood.

### ARTICLE 1 – KĀWANATANGA

- c) The Council are unable to determine the ethnicity of all members who provided feedback on the Draft Code. Recording this data in the future would be useful in demonstrating engagement by Māori across the profession membership. Issues of Māori data sovereignty should be considered and enacted upon in this regard.
- d) A more meaningful engagement approach with Māori would seek feedback from Māori members directly in ways that are culturally appropriate. I recommend seeking direct feedback from Māori in ways that are culturally appropriate.
- e) In addition to point d), given the intention of the Draft Code is to “protect the health and safety of health consumers”, drawing feedback from the voice of Māori whānau as service users would improve the quality of the Draft Code to meet the needs of Māori.

### ARTICLE 2 – RANGATIRATANGA

- f) Acknowledging Māori history, te reo and tikanga as “**valid**” in Principle 2.1 goes further to legitimize their use in all contexts.
- g) Recognising the authorising environment in which the Draft Code is developed and adopted would be strengthened by ensuring the constitutional setting is more responsive, and gives full effect, to the promise of te Tiriti. A starting point would include a Critical Tiriti Analysis, or similar structured review, of the Constitution for Osteopaths (August 2021).
- h) Consider providing the conditions to enable professional Māori advice to develop a Code of Conduct from a mātauranga Māori perspective that is tikanga-led. This will improve capability of key personnel within the osteopathic profession to respond more appropriately to Māori health aspirations, needs, and issues and, in doing so, enhance Māori communities’ confidence and trust in the decisions made by both the Council and osteopaths.  
For example, a tikanga-led approach that includes Māori epistemologies would surface codes of conduct as determined by Māori. Tikanga is described as the customary system of Māori values and practices that have developed over time and are deeply embedded in the Māori social context<sup>3</sup>. It is defined as the correct procedures, customs, habits, methods, manners, rules, ways,

---

<sup>3</sup> Moorfield, John C. (2005). *Te aka : Māori-English, English-Māori dictionary and index*. Auckland, N.Z : Pearson Longman



codes, plans, practices, conventions, and protocols that are meaningful and appropriate to Māori. Māori ethical values and principles such as *tika* (right order and right response), *pono* (truth, integrity) and *aroha* (love, affection, compassion) might emerge as foundational to a code of conduct developed from a Māori perspective.

### ARTICLE 3 – ŌRITETANGA

- i) Include the knowledge and understanding of the social, political, economic and cultural determinants of health, both historic and contemporary, that have contributed to, and maintain, inequitable health outcomes for Māori. Importantly, this means acknowledging the ongoing impacts of colonisation in Aotearoa New Zealand that manifest in the disproportionate burden of injury and disease for Māori.

### WAIRUATANGA

- j) Providing a brief description of the Ritenga Māori Declaration would clarify the centrality of wairuatanga to Māori ways of being and thus Māori health and wellbeing outcomes. This would also add greater rationale within the context of te Tiriti o Waitangi as to the importance of the spiritual beliefs of Māori when providing culturally safe services to Māori. I suggest including a statement such the following within the te Tiriti o Waitangi section of the Draft Code:

*The council acknowledges the Ritenga Māori Declaration and the commitment to religious freedom by recognizing wairuatanga (spiritual practices) and the value of Māori customary rituals.*

## PHASE 5 – MĀORI FINAL WORD

*The final phase outlines how Māori validate and assert authority over the Draft Code through Māori leadership, engagement, critique or peer review.*

There is some input by Māori in to the Draft Code, although as highlighted previously, the final decision, in the context of developing and adopting the Draft Code, resides with the Council. It is critical to highlight this given the Council's constitution<sup>4</sup> which describes one of its principles is "to act consistently with the te Tiriti o Waitangi/Treaty of Waitangi". This statement fails to recognise the differences in meanings between the two text, and there are no explicit descriptions or mechanisms to give effect to this principle. In short, it appears that Māori have no constitutional power within the Council to exercise their rangatiratanga to adopt and execute the Draft Code.

## CONCLUSION

The purpose of this report has been to apply a Critical te Tiriti Analysis to the Draft Code providing a structured method of review to ensure the Draft Code is responsive to te Tiriti o Waitangi. Whilst the review has surfaced room for improvements to the current Draft Code, on balance a FAIR response to the CTA indicators is demonstrated. In my professional opinion, by adopting all of the recommendations

---

<sup>4</sup> Please note that the scope of this report did not include an in depth review or CTA of the Council's constitution.

in this review, I expect the Draft Code to meet all CTA indicators to an EXCELLENT level. I also recommend the Council reflect on this review and apply all learnings to future decisions and policy developments that will have an impact on Māori. In conclusion, I acknowledge Te Kaunihera Haumanu Tuahiwi o Aotearoa – Osteopathic Council of New Zealand for taking the bold step to undertake this CTA in order to meet their responsibilities, obligations and commitments to te Tiriti o Waitangi.

This report has been produced by Te Miri Rangi  
on behalf of Kaunihera Haumanu Tuahiwi o Aotearoa  
– Osteopathic Council of New Zealand  
(November, 2022)