

Our shift in practice is framed by Te Tiriti o Waitangi

Background Paper

Introduction

The foundation of social work practice for Tangata Whenua (Māori) and the Crown lies with Te Tiriti o Waitangi (the Treaty of Waitangi)ⁱ. Our practice shift states that: “our shift in practice is framed by Te Tiriti o Waitangi, based on a mana enhancing paradigm for practice and draws from Te Ao Māori principles of oranga”ⁱⁱ. The purpose of this paper is to focus on our obligations as a Crown agency to enact the principles of Te Tiriti/The Treaty in our practice with tamariki/mokopuna, whānau, hapū, iwi and hāpori.

Historical Context

Te Tiriti o Waitangi (the Māori text) was signed on 6 February 1840 and by the end of that year, it was signed by over 500 rangatira. The Treaty of Waitangi (the English text) was only signed at Manukau and Waikato Heads by 39 rangatira.ⁱⁱⁱ It is important to note that key differences between the texts led to varying interpretations and shades of meaning.^{iv} Both texts reflect different worldviews, and therefore different economic, cultural, social and political understandings and priorities.^v

Furthermore, the signing of Te Tiriti/The Treaty required a significant amount of trust toward the Crown on the part of Tangata Whenua as the indigenous people of Aotearoa New Zealand. As a living agreement, Te Tiriti/The Treaty reflected the understandings and aspirations of a helpful and collaborative relationship between Tangata Whenua and the Crown. However, continued breaches deteriorated the relationship over time, resulting in generations of Tangata Whenua entering relationships with Crown agencies from positions of deficit and marginalization.^{vi} Therefore, the core Te Tiriti/The Treaty principles outlined below are also about addressing inequitable power relationships to fully address tamariki/mokopuna and whānau wellbeing.^{vii}

It is essential that all Oranga Tamariki kaimahi recognise that the tensions, fear and mistrust in today’s society that exist between Tangata Whenua and the Crown (through the New Zealand Government and its agencies) stems from the fundamental, historic and continued beaches of Te Tiriti/The Treaty and therefore, the aspirations and understandings of Tangata Whenua.

How is Te Tiriti/The Treaty interpreted today?

Through the New Zealand courts and Waitangi Tribunal, principles setting out the intent of Te Tiriti/the Treaty have evolved following decades of jurisprudence.^{viii} In addition to the need for principles to mediate the textual differences of Te Tiriti/The

Treaty and varying interpretations mentioned above, the Crown needed guidance on how it proposed to act when dealing with Te Tiriti/The Treaty matters.^{ix} Three core principles emerged:

- I. **Partnership:** Both the Crown and Māori have a positive duty to act in good faith, fairly, reasonably, and honourably towards each other.
- II. **Active Protection:** The Crown has a positive duty to protect Māori property interests and taonga.
- III. **Redress:** Past wrongs give rise to a right of redress.^x

In the past, the courts have emphasised that Te Tiriti/The Treaty is not a blueprint but a living document and a set of principles not prescriptions.^{xi} Additionally, with the passage of time, the principles which underlie Te Tiriti/The Treaty have become much more important than its precise terms.^{xii}

The Waitangi Tribunal

Te Tiriti/The Treaty is central to all activities and processes that the Waitangi Tribunal undertakes.^{xiii} While there are limits on the extent to which Te Tiriti/The Treaty rights can be argued and enforced in court, the Waitangi Tribunal provides a forum for hearing cases related to Te Tiriti/The Treaty.^{xiv} The findings and recommendations drawn regarding the Crown's obligations to Tangata Whenua under Te Tiriti/The Treaty are of upmost relevance to all Oranga Tamariki kaimahi.¹ The Tribunal's approach to interpreting Te Tiriti/The Treaty is extensive and has developed over four decades. In the Tribunal's *He Pāharakeke, he Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry* report (2021), it reaffirmed that the principles of Te Tiriti/The Treaty are the underlying mutual obligations and responsibilities placed on the parties (Tangata Whenua and the Crown).^{xv} Due to textual differences, the principles must be applied, not the literal words.^{xvi} For Oranga Tamariki kaimahi, recognising how the Tribunal approaches and interprets Te Tiriti/The Treaty provides clarity on how Te Tiriti/The Treaty is used in our modern context.

Organisational Obligations

In more recent times, the central obligations of Oranga Tamariki under Te Tiriti/The Treaty are set out in section 7AA of the Oranga Tamariki Act 1989. Section 7AA articulates the duties of Oranga Tamariki in relation to Te Tiriti/The Treaty including that the chief executive is required to ensure policies and practices have the objective of improving outcomes and reducing inequities for tamariki/mokopuna Māori.^{xvii} The courts have found that the entirety of the Act should be read consistently with Te Tiriti/The Treaty.^{xviii} As we shift our practice within Oranga Tamariki, Te Tiriti/The Treaty provides a framing of social work practice to actively promote and practice its principles. Te Tiriti/The Treaty and its principles have informed a wide range of

¹ "All Oranga Tamariki kaimahi" are staff which include but are not limited to; social workers, supervisors, regional managers, youth workers, co-ordinators, kairaranga ā-whānau and advisors.

frameworks, models of practice, methodologies and standards within Oranga Tamariki. A key example for practice are the section 7AA principles of mana tamaiti, whakapapa and whanaungatanga and strong practice guidance about their implementation.² An example from our methodologies and frameworks is how Te Tiriti/The Treaty principles of partnership, participation, tino rangatiratanga and protection were intentionally positioned to inform practice in the co-construction of Te Toka Tūmoana.³ Moreover, the mana-enhancing paradigm for practice core component of the ‘significance of history’ requires that all Oranga Tamariki kaimahi enact the principles of Te Tiriti/The Treaty by building or advancing their understanding of its history, including the impact of colonisation on Tangata Whenua in our modern context. It is essential that, as a starting point, all Oranga Tamariki kaimahi understand and value Te Ao Māori principles and worldviews. Nationwide hui and workshops have helped to create resources and learning on how Te Tiriti/The Treaty and Te Ao Māori principles are applied to practice. These include Te Toka Tūmoana videos, cue cards, audio recordings, written guidance and papers.^{xix}

Professional Obligations

At an individual level, statutory social workers also hold professional obligations as registered practitioners. This includes the requirements set out by the Social Workers Registration Board, such as the core competencies and Code of Conduct.^{xx}

Within the core component of ‘Principled Practice’ of the mana-enhancing paradigm for practice, all Oranga Tamariki kaimahi are expected to reflect on their values and principles which inform their practice.^{xxi} In addition, the Ngākau Whakairo domain of our Practice Framework places an emphasis on the rights of tamariki and whānau.^{xxii} For Tangata Whenua this includes rights under Te Tiriti/The Treaty along with the rights protected under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the United Nations Convention on the Rights of the Child (UNCROC). Youth workers, Team Leaders and Supervisors hold additional obligations set out in the Oranga Tamariki (Residential Care) Regulations

“Under the Social Workers Registration Board Core Competencies standard one, a competent social worker must demonstrate knowledge of Te Tiriti/The Treaty, Te Reo Māori and tikanga Māori; and articulate how the wider context of Aotearoa New Zealand both historically and currently can impact on practice.”

– Social Workers Registration Board

² As at July 2021, the most recent practice guidance is “Maintaining mana tamaiti, whakapapa and whanaungatanga practice during COVID-19” (2020): [maintaining-mana-tamaiti-whakapapa-whanaungatanga-alert-level-3.pdf \(orangatamariki.govt.nz\)](https://www.orangatamariki.govt.nz/assets/Uploads/Maintaining-mana-tamaiti-whakapapa-whanaungatanga-alert-level-3.pdf). For our Mana Tamaiti Objectives (2019) see: [Practice for working effectively with Māori | Practice Centre | Oranga Tamariki](#).

³ Te Toka Tūmoana is the Tangata Whenua and Bicultural Principled Wellbeing Framework for Working Effectively with Māori.

1996. In addition, all Oranga Tamariki kaimahi, including Regional Managers, Senior Advisors, Kairaranga ā-whānau and co-ordinators hold key professional obligations under the Oranga Tamariki Code of Conduct.

Tino rangatiratanga over kāinga

In *He Pāharakeke, he Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry* (2021), the Waitangi Tribunal considered the core principles of partnership, active protection and redress; and the further principles of equity and options.^{xxiii} The Tribunal also expanded on tino rangatiratanga over kāinga as an element of the principles of partnership and active protection. The word 'kāinga' has a range of meanings including home, residence, village, or homeland. Article two of Te Tiriti o Waitangi (Māori text) guarantees to Māori tino rangatiratanga over physical possessions and kāinga.

Judge Doogan stated in the Tribunal's report that tino rangatiratanga over kāinga "is a guarantee of the right to continue to organise and live as Māori. Fundamental to that is the right to care for and raise the next generation"

- Waitangi Tribunal, 2021, xiii.

The obligations of Oranga Tamariki to exercise kāwanatanga must be carefully balanced with the right to tino rangatiratanga over kāinga. While Oranga Tamariki has an ongoing role and responsibility to provide a care and protection system for tamariki/mokopuna, this sits in the context of tino rangatiratanga over kāinga. The section 7AA vision statement that "no tamaiti Māori will need state care" aligns with this point.^{xxiv} Oranga Tamariki have an obligation to support, strengthen and assist

whānau Māori to care for their tamariki/mokopuna. Preventing the removal of tamariki/mokopuna from their kāinga is a large focus of our efforts.^{xxv}

Conclusion

Our practice shift within Oranga Tamariki recognises the significance of Te Tiriti o Waitangi (the Treaty of Waitangi) for framing our practice relationship between the Crown and Māori. As a Crown agency, we are obliged to practice all principles of Te Tiriti/The Treaty to ensure the wellbeing and tino rangatiratanga of whānau, hapū and iwi. Combined with Te Ao Māori wellbeing principles found in Te Toka Tūmoana, section 7AA and mana-enhancing practice, Te Tiriti o Waitangi principles in the context of Oranga Tamariki are about promoting, upholding and practicing in ways that acknowledge the rights of tamariki/mokopuna, whānau, hapū and iwi.

Appendices

Appendix One: Articles of Te Tiriti o Waitangi/The Treaty of Waitangi

Appendix Two: Key Te Tiriti/Te Treaty Principles

Appendix One: Articles of Te Tiriti o Waitangi/The Treaty of Waitangi

The following tables were adapted from the Oranga Tamariki-Ministry for Children Treaty of Waitangi Workshop Pack.

English version	Māori version (translated)
Article One	
<p>The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or individual chiefs respectively exercise or possess or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.</p>	<p>The Chiefs of the Confederation and all the chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.</p>
Article Two	
<p>Her Majesty the Queen of England confirms and guarantees to the chiefs and tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the chiefs of the united tribes and the individual chiefs yield to Her Majesty the exclusive right of pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.</p>	<p>The Queen of England agrees to protect the chiefs, the sub-tribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand, the Chiefs of the Confederation and all the chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.</p>

Article Three

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her **royal protection** and imparts to them all the **Rights and Privileges of British Subjects**.

For this agreed arrangement therefore concerning the government of the Queen, the Queen of England will **protect** all the ordinary people of New Zealand and will give them **the same rights and duties of citizenship as the people of England**.

Appendix Two: Core Te Tiriti/The Treaty Principles

Partnership

The duty to act reasonably, honourably, and in good faith: Te Tiriti/The Treaty signifies a partnership between the Crown and Māori. Each partner must act reasonably and in utmost good faith towards the other.

Oranga Tamariki must act reasonably, honourably and in good faith in all actions.

Balance between kāwanatanga and tino rangatiratanga: This requires a context-specific balance to be struck between the Crown's right to govern and the right of Māori to exercise tino rangatiratanga over their land, resources and people.

While Oranga Tamariki has an ongoing kāwanatanga role and responsibility to provide a care and protection system for tamariki/mokopuna, this must be balanced with the right of Māori to exercise tino rangatiratanga.

The duty to make informed decisions: The Courts have found that it is inherent in the Crown's obligation to act in good faith; that it is obliged to make **informed decisions on matters affecting the interests of Māori**.

This obligation requires the Crown to consult with Māori, on matters important to Māori, such as the work undertaken by Oranga Tamariki.

Active protection

This principle encompasses the Crown's obligation to take positive steps to ensure that **Māori interests are protected** (e.g., Te Reo Māori). Māori interests include tino rangatiratanga and taonga, including Māori themselves as a collective (whānau and tamariki/mokopuna) and/or individuals.

Oranga Tamariki has an obligation to ensure mana tamaiti, whakapapa and whanaungatanga are protected.

This principle also requires Oranga Tamariki to take action to **address disparities**.

Redress

This principle means that should the Crown act in excess of its kāwanatanga powers, or breach Te Tiriti/The Treaty terms in any other way by act or omission resulting in prejudice, the Crown should provide a remedy.

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ⁱ Oliver, 1988; Ruwhiu, 2001.

ⁱⁱ Oranga Tamariki-Ministry for Children, 2021.

ⁱⁱⁱ It is recorded that the English text was signed based on explanations in Te Reo Māori. Exactly what was explained is unknown. Orange, 2013; Waitangi Tribunal, 2016; Network Waitangi, 2018.

^{iv} See Appendix One: Articles of Te Tiriti o Waitangi/The Treaty of Waitangi.

^v Network Waitangi, 2018, p. 14.

^{vi} Ruwhiu et al., 2016, p. 83; Oranga Tamariki, 2021, p. 12.

^{vii} To read more on this see Ruwhiu & Hira et. al, 2016.

^{viii} Oranga Tamariki, 2020, p. 9; Orange, 2013, p. 124.

^{ix} Orange, 2013, p. 122.

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- ^x Deputy Solicitor-General to Chief Legal Advisors, personal communication, 14 August 2017.
- ^{xi} Deputy Solicitor-General to Chief Legal Advisors, personal communication, 14 August 2017.
- ^{xii} *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 514.
- ^{xiii} Waitangi Tribunal, 2016.
- ^{xiv} Ministry of Justice, 2020.
- ^{xv} Waitangi Tribunal, 2021, p. 9.
- ^{xvi} *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 662, 663 as cited in Waitangi Tribunal, 2021, p. 10.
- ^{xvii} See the Oranga Tamariki Act 1989 and/or the Oranga Tamariki Section 7AA Annual Report (2020) p. 18 for its summary.
- ^{xviii} *Barton-Prescott v Director of Social Welfare* [1997] 3 NZLR 179.
- ^{xix} There exists a wealth of learning resources available through the Practice Centre (<https://practice.orangatamariki.govt.nz/>). For more information on the resources themselves please contact the authors directly. For reading material see: Boulton, A., & Cvitanovic, L. (2020), *Māori centred social work practice: A literature review* and Oranga Tamariki-Ministry for Children (2021), *The co-construction of Te Toka Tūmoana: Tangata whenua and Bicultural principled wellbeing framework for working effectively with Māori* (Background Paper).
- ^{xx} Social Workers Registration Board. Also see: [Message from Andrea Nichols: Social Worker obligations \(sharepoint.com\)](#)
- ^{xxi} For more information on the mana-enhancing paradigm for practice, see Oranga Tamariki-Ministry for Children (2021), *Development of the Mana-enhancing Paradigm for Practice*.
- ^{xxii} See [Overview of the Practice Shift \(sharepoint.com\)](#).
- ^{xxiii} See Appendix Two: Key Tiriti/Treaty Principles.
- ^{xxiv} Oranga Tamariki, 2020, p. 22.
- ^{xxv} Oranga Tamariki, 2020; Waitangi Tribunal, 2021, p. 6.