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**The Royal Australasian College of
Physicians' submission to the National
Ethics Advisory Committee**

Consultation on the Draft Ethical Framework for Resource
Allocation in Times of Scarcity

Hōngongoi 2020

Introduction

The Royal Australasian College of Physicians (RACP) welcomes the opportunity to submit feedback on the National Ethics Advisory Committee (the NEAC) Consultation on the Draft Ethical Framework for Resource Allocation in Times of Scarcity (the Framework).

The RACP works across more than 40 medical specialties to educate, innovate and advocate for excellence in health and medical care. Working with our senior members, the RACP trains the next generation of specialists, while playing a lead role in developing world best practice models of care. We also draw on the skills of our members, to develop policies that promote a healthier society. By working together, our members advance the interest of our profession, our patients and the broader community.

Overview

The RACP believes that the Framework is well-constructed, and well situated to consider the dilemmas endemic in situations where resources are scarce, as demonstrated by the current COVID-19 global pandemic. It considers the relevant issues, and pertinently references the paramount founding document of Aotearoa New Zealand, Te Tiriti o Waitangi, and uses it to situate considerations within the realities of the nation. We believe that the Framework properly captures the ethical tensions in resource allocation in times of scarcity and informs practitioners well on the ethical implications of their decisions. However, the Implementation strategy does not fully commit to the realisation equity, and this conservative approach ultimately weakens the Framework.

The RACP believes that Te Tiriti o Waitangi is an absolute commitment to pursuing health equity for Māori, which should not be subsumed under other concerns. We expect this foundational importance to be reflected in the final Statement, and for the Crown to fulfil its obligation and responsibilities to protect and promote Māori health equity.

Comments on the Document

Inadequate Commitment to Te Tiriti o Waitangi

The Framework initially makes strident commitments to the implementation of Te Tiriti o Waitangi in health. It recognises not only the mandate that Māori participate in equal partnership with the Government, but also the pervasive impact of the social determinants of health, and a historical lack of equity in health outcomes.

However, this initial strong foundation is somewhat undone by the expansion of these principles found in the appended examples. Inherent inequity in current prioritisation processes based on comorbid conditions and future life expectancy are recognised, however it is concluded that the tension between principles of equity, and principles of utility, cannot be resolved in the Framework. Thus, at this point in the care pathway, escalation of care decisions such as admission to ICU, will likely hinge on purely clinical considerations, rather than a process based on equity.

This is an unacceptable approach, because it will not achieve Māori health equity; rather, it is likely to result in the perpetuation of entrenched systemic inequities. Backing away from making a system-level judgement on the implementation of equity in ethics leaves judgements to individual clinicians

on a case-to-case basis. Placing a high degree of emphasis on each individual clinician's subjective perspective, including their inherent bias, and background in a western system of medicine will disadvantage Māori. Ultimately, it will lead to a lower degree of emphasis on kaupapa Māori and Te Ao Māori values.

Medical students in Aotearoa New Zealand have been found to have an implicit preference for NZ Europeans, alongside an implicit association of NZ Europeans with positive compliance attributes relative to Māori. This underlines the need to not simply default to individual clinical judgements made on a case-by-case basis¹. On a systems level, Māori leaders have reported that racism is common within policy processes, and that consultation/advisory activities are often uncomfortable and emotionally distressing². Further, analysis of New Zealand's Public Health and Disability Act 2000 and Ministry of Health-developed frameworks and strategic documents have been found to poorly articulate the Crown's obligations under Te Tiriti. Between 2006 and 2016, no relevant public health policy and strategy documents referenced the Māori text of Te Tiriti, with a minority referencing the English version³. These are not the hallmarks of a system which can be trusted to create equitable outcomes for Māori without a clear call to action, and a clear framework by which to navigate ethical concerns.

The RACP expressed concerns with a lack of equity in the response to the COVID-19 pandemic through our *He Tangata, He Tangata, He Tangata: Centre Equity and Te Tiriti o Waitangi in all COVID-19 Pandemic Planning, Strategy and Responses* statement⁴. This stands in support of the Te Rōpū Whakakaupapa Urutā position statement *COVID-19 and Māori health – when equity is more than a word*⁵. The Framework should work to create a health system where these perspectives are reflective of the norm, and to do this, it must be bold. Under Article Two of Te Tiriti o Waitangi, the Crown has an obligation to protect Māori health as a taonga, and the Framework should embody this.

Hauora: Report on Stage One of the Wai 2575 Inquiry

Hauora Wai 2575 provided the aforementioned call to action for the health system, detailing systemic and pervasive health inequities borne from centuries of the impacts of colonisation, and racism. The Crown has been found to have repeatedly breached Te Tiriti o Waitangi, by failing to design and administer the primary healthcare system to address Māori health inequities and by failing to give effect to the Treaty's guarantee of tino rangatiratanga⁶.

The Framework must reflect these findings, and prioritise health equity for Māori, to an extent where it is commensurate with active protection, and cannot be subsumed. Otherwise, the Framework risks becoming another document which perpetuates the failings of the Crown in Aotearoa New Zealand, and contributes to negative health outcomes for Māori.

¹ Ethnic bias amongst medical students in Aotearoa/New Zealand: Findings from the Bias and Decision Making in Medicine (BDMM) study

² Māori and Pasifika leaders' experiences of government health advisory groups in New Zealand

³ Treaty of Waitangi in New Zealand public health strategies and plans 2006 2016

⁴ https://www.racp.edu.au/docs/default-source/default-document-library/covid-19/he-tangata-racp-maori-health-committee-covid-19.pdf?sfvrsn=61e2eb1a_4

⁵ <https://www.uruta.maori.nz/when-equity-is-more-than-a-word>

⁶ Report on stage one of health services and outcomes released

Pandemic Ethics

With regard to the two questions posed by the NEAC surrounding areas of pandemic ethics which should be considered in the review, and what ethical guidance would be beneficial for decision-makers, communities and individuals, the RACP believes that guidance on the specific ways in which pandemic ethics apply to Aotearoa New Zealand is desirable. This is somewhat covered in the Framework in its current form, however this could be further expanded, particularly with reference to a more granular understanding of our population make-up. For example, how ethics interacts with differing age make-up between ethnic groups, and the impact this has on prioritisation could be explored.

Another area of consideration ethically, is the proliferation of information in a pandemic situation. Doctors are in a position of power during these situations, and with the ever-expanding amounts of misinformation and disinformation proliferated through technological channels, it is important that information presented by health professionals is factual and correct. This could be explored in the Framework.

Establishment of Decision-Making Groups

The Framework recommends the establishment of decision-making groups in national and local health service institutions, so as to best make decisions in a representative manner. It recommends that each group include perspectives of their particular institution's patients, Māori, disabled people, clinicians, ethicists, legal and any other relevant community stakeholders.

However, this recommendation fails to offer guidance on how a small service, of a scale where a representative group of this size would be impractical, can best achieve representative decision-making. In a nation such as Aotearoa New Zealand where, outside of major metropolitan areas, there are many small rural towns and communities, this will be a common concern. As such, the RACP believes that guidance on this matter should be included in the Framework.

Ethical implications of the Health and Disability System Review

The recently released final report of the Health and Disability System Review, and the subsequent commitment by the Government to the implementation of its recommendations, has significantly shifted the landscape of healthcare in Aotearoa New Zealand⁷. It is important that the Framework recognises this, and adapts.

For example, recommendations on the establishment of decision-making groups could be affected by the reduction in the number of District Health Board's (DHB's), as this will have a material impact on the number of organisations throughout Aotearoa New Zealand, and their scale. Establishment of the Māori Health Authority, and their responsibility to partner with the system to ensure mātauranga Māori and other Māori health issues are appropriately incorporated into all aspects of the system, will also have implications for these groups. While the impact of this report has not been entirely ascertained, due to its recent release, it is clear that it must be considered and reflected in the Framework.

⁷ Final report of the Health and Disability System Review

Conclusion

The RACP thanks the NEAC for the opportunity to provide feedback on this consultation. To discuss this submission further, please contact the NZ Policy and Advocacy Unit at policy@racp.org.nz.

Nāku noa, nā

A handwritten signature in black ink that reads "George Laking". The signature is written in a cursive, flowing style.

Dr George Laking
Aotearoa NZ President
The Royal Australasian College of Physicians