



Report of the Petitions Committee

Petition of Greg Rzesniowiecki: Amend Section 5 and add a new section 5A to the NZ Bill of Rights Act 1990

November 2022

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Hon Jacqui Dean
Chairperson

Petition of Greg Rzesniowiecki

Recommendation

The Petitions Committee has considered the petition of Greg Rzesniowiecki—Amend Section 5 and add a new section 5A to the NZ Bill of Rights Act 1990—and recommends that the House take note of its report.

Request to amend Section 5 of the New Zealand Bill of Rights Act

The petition was presented to the House on 14 December 2021. It requests:

That the House of Representatives amend Section 5 of the New Zealand Bill of Rights Act 1990 by inserting “and subject to section 5A”, and insert a new section 5A: “Unjustified limitations” to say “None of sections 4, 5, 6 provide any justified limits on rights and freedoms contained in sections 8,9,10 and 11”.

Background

The New Zealand Bill of Rights Act 1990 (NZBORA) protects specific civil and political rights. It is a significant part of New Zealand’s constitutional arrangements, but is statute law, rather than superior or supreme law. That means it guides, but does not override, other laws passed by Parliament. All legislation considered by Parliament is examined to see whether there are inconsistencies with NZBORA. However, New Zealand courts cannot strike down or repeal legislation found to be inconsistent with NZBORA.

Section 5 of NZBORA allows for “justified limitations” to the rights and freedoms in the Bill of Rights only where it can be “demonstrably justified in a free and democratic society”.¹

Comments from the petitioner

The petitioner believes New Zealand’s COVID-19 vaccine programme breached sections 8, 9, 10, and 11 of the New Zealand Bill of Rights Act. These sections are:

- Section 8: Right not to be deprived of life
- Section 9: Right not to be subjected to torture or cruel treatment
- Section 10: Right not to be subjected to medical or scientific experimentation
- Section 11: Right to refuse to undergo medical treatment.

Mr Rzesniowiecki submitted that these rights are so significant that they cannot be compromised to achieve other goals. He understands that this principle is upheld in

¹ New Zealand Bill of Rights Act 1990, section 5, available at: <https://www.legislation.govt.nz/act/public/1990/0109/latest/DLM225501.html>.

international human rights agreements such as the International Covenant on Civil and Political Rights (ICCPR).

In the opinion of the petitioner, these rights are insufficiently protected by NZBORA because of the scope for justified limitations to the rights and freedoms in the Act. He proposes amending section 5 so that justified limitations could not be considered for the specific rights outlined in sections 8, 9, 10, and 11.

Mr Rzesniowiecki's written submissions outline his beliefs about the public health response to COVID-19, including vaccines. In summary, he argues that COVID-19 vaccines are medical experiments that he believes have caused unnecessary deaths and injuries.

The petitioner believes the rollout of COVID-19 vaccines in New Zealand breached the fundamental rights guaranteed in sections 8–11 of NZBORA. He believes that his proposed amendment to section 5 of NZBORA would have prevented the suffering and death he attributes to COVID-19 vaccinations.

Comments from the Ministry of Justice

The Ministry of Justice submitted that the New Zealand Bill of Rights Act is one of New Zealand's core constitutional documents. It gives equal status to all rights and freedoms in the Act, based on the perspective that all human rights are universal, indivisible, interrelated, and interdependent.

The ministry explained there are no absolute rights or freedoms in NZBORA. Sections 4–6 of the Act guide how NZBORA applies when interpreting other legislation. Section 4 maintains the supremacy of Parliament in law-making by providing that, when another Act is inconsistent with NZBORA, the other Act prevails. Section 5 provides that only those limits that are "reasonable" and "justified by law" can be placed on rights and freedoms guaranteed in NZBORA. Section 6 requires the courts to give an NZBORA interpretation to laws whenever it is possible.

The ministry does not support inserting a provision such as that proposed by the petitioner to prevent the use of these sections in relation to certain human rights. Such an insertion, it says, would interfere both with the ability of Parliament to create legislation and the ability of courts to consider the consistency of legislation with the Act.

According to the ministry, additional protections exist already which make it difficult to justifiably limit the specific rights that the petitioner is concerned about. For example, the right not to be subjected to medical experimentation without consent is further protected by the Crimes Act 1961 which contains offences for unlawful injury and assault. It is also protected by Rules 6 and 7(1) of the Code of Health and Disability Services Consumers' Rights, which reinforce the need for informed consent in clinical trials.

Our response to the petition

Applying international and local human rights principles in specific situations is not simple. Decision-makers must assess and weigh up complex facts and diverse perspectives. Protecting rights and freedoms involves questions not only of legal interpretation but also of

political debate and judgement. Rights and freedoms need to be understood as a connected whole, not in isolation from each other.

The petitioner believes his proposed amendment to NZBORA would have resulted in different decisions about the COVID-19 vaccination rollout to those made in New Zealand since 2020. That may not necessarily have been the case. Decisions about public health responses to the COVID-19 pandemic would still have had to consider complex scientific and medical information, under urgency, and in the face of uncertainty.

We note, however, that the petitioner's proposed amendment to NZBORA would have limited Parliament's involvement in these significant decisions. We do not believe that most New Zealanders want such debates and decisions handed over to be made solely by judges. We believe most New Zealanders expect this consideration to occur in both political and judicial processes.

New protections of rights and freedoms

Since Mr Rzesniowiecki's petition was presented in December 2021, Parliament has passed the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Act 2022.² The Act provides a formal process for bringing court declarations of inconsistency with NZBORA to the attention of the House of Representatives so they can be considered by the executive and legislative branches of Government. In our view, this increases the protections of the rights and freedoms outlined in NZBORA.

We appreciate that there are always questions of equitable access to the courts. However, the petitioner's proposal would equally require New Zealanders to seek resolution of questions about the application of NZBORA through judicial, rather than political, processes.

We encourage Mr Rzesniowiecki to seek a declaration of inconsistency if he has further concerns about the application of NZBORA sections 8, 9, 10, and 11, so it can be taken through the process outlined in the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Act.

² New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Act 2022 available at: <https://www.legislation.govt.nz/act/public/2022/0045/latest/LMS324104.html>

Appendix

Committee procedure

The petition was referred to us on 14 December 2021. We met between 17 February and 17 November 2022 to consider it. We received written submissions from the petitioner and the Ministry of Justice.

Committee members

Hon Jacqui Dean (Chairperson)
Rachel Boyack
Steph Lewis
Nicole McKee
Sarah Pallett
Teanau Tuiono

Evidence received

The documents we received as evidence in relation to this petition are available on the Parliament website.