

NEW ZEALAND BILL OF RIGHTS BILL

EXPLANATORY NOTE

THIS Bill enacts a Bill of Rights.

The Bill implements most of the recommendations of the Justice and Law Reform Committee in its Final Report on a White Paper on a Bill of Rights for New Zealand (Parliamentary Paper I. 8c of 1988). Those recommendations relate to a draft Bill of Rights contained in a White Paper on a Bill of Rights for New Zealand. That White Paper (Parliamentary Paper A. 6 of 1985) was tabled in the House of Representatives in April 1985, and referred to the Committee for investigation and report.

The Bill has 2 purposes, which are set out in the Long Title.

First, its object is to affirm, protect, and promote human rights and fundamental freedoms in New Zealand.

Secondly, the Bill affirms New Zealand's commitment to the International Covenant on Civil and Political Rights, which New Zealand has ratified.

The main features of the Bill are as follows:

- (a) The Bill of Rights is to be an ordinary statute. It will not be entrenched, i.e., it will be able to be amended or repealed in the same way as any other statute. The Courts will not have the power to strike down legislation that is inconsistent with the Bill of Rights. Where another statute overrides the Bill, the other statute will prevail. However, *clause 5* of the Bill directs the Courts, when interpreting other enactments, wherever possible to prefer an interpretation that is consistent with the rights and freedoms set out in the Bill.

The rights and freedoms set out in the Bill will be enforceable by the Courts in certain situations. *Clause 3* of the Bill states that the Bill applies in relation to all branches of Government and in relation to all public functions, duties, and powers. In the absence of statutory authority to act contrary to the Bill of Rights, Government agencies will be required to respect those rights and freedoms. Action that violates those rights and freedoms will be unlawful. The Courts might enforce those rights in different ways in different contexts:

- (b) The rights and freedoms set out in the Bill are confined to civil and political rights (which are set out in *Part II*). The Bill does not cover social, economic, and cultural rights. In this respect it departs from the recommendations of the Justice and Law Reform Committee, which

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recommended that certain social and economic rights be included in the Bill:

- (c) The Bill of Rights applies to actions carried out by the State and its agencies, not to the actions of private individuals. This is made clear in *clause 3*:
 - (d) The rights and freedoms contained in the Bill are not absolute. *Clause 4* states that they “may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”:
 - (e) The fact that a particular right or freedom is not included in the Bill of Rights, or is included only in part, does not mean that the right or freedom no longer exists or is restricted in any way. The Bill of Rights does not purport to be an exhaustive list of fundamental rights and freedoms. *Clause 27* makes this clear:
 - (f) The Bill charges the Attorney-General with the responsibility of alerting Parliament where any provision of any Bill introduced into the House of Representatives appears to be inconsistent with the rights and freedoms set out in the Bill of Rights. In the case of a Government Bill, the Attorney-General is required to bring any such provision to the attention of the House on the Bill’s introduction. In the case of other Bills, the provision must be brought to the attention of the House as soon as practicable after the introduction of the Bill (see *clause 6*).
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Right Hon. Geoffrey Palmer

NEW ZEALAND BILL OF RIGHTS

ANALYSIS

Title	12. Freedom of thought, conscience, and religion	
1. Short Title and commencement	13. Freedom of expression	
PART I		
GENERAL PROVISIONS		
2. Rights affirmed	14. Manifestation of religion and belief	
3. Application	15. Freedom of peaceful assembly	
4. Justified limitations	16. Freedom of association	
5. Interpretation consistent with Bill of Rights to be preferred	17. Freedom of movement	
6. Attorney-General to report to Parliament where Bill appears to be inconsistent with Bill of Rights	<i>Non-Discrimination and Minority Rights</i>	
PART II		
CIVIL AND POLITICAL RIGHTS		
<i>Life and Security of the Person</i>		
7. Right not to be deprived of life	18. Freedom from discrimination	
8. Right not to be subjected to torture or cruel treatment	19. Rights of minorities	
9. Right not to be subjected to medical or scientific experimentation	<i>Search, Arrest, and Detention</i>	
10. Right to refuse to undergo medical treatment	20. Unreasonable search and seizure	
PART III		
<i>Democratic and Civil Rights</i>		
11. Electoral rights	21. Liberty of the person	
	22. Rights of persons arrested or detained	
	23. Rights of persons charged	
	24. Minimum standards of criminal procedure	
	25. Retroactive penalties and double jeopardy	
	26. Right to justice	
	PART III	
	MISCELLANEOUS PROVISIONS	
	27. Other rights and freedoms not affected	
	28. Application to legal persons	

A BILL INTITULED

An Act—

(a) To affirm, protect, and promote human rights and fundamental freedoms in New Zealand; and

(b) To affirm New Zealand's commitment to the International Covenant on Civil and Political Rights

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No. 203—1

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the New Zealand Bill of Rights Act 1989.

(2) This Act shall come into force on the 1st day of December 1989. 5

PART I

GENERAL PROVISIONS

2. Rights affirmed—The rights and freedoms contained in this Bill of Rights are affirmed.

3. Application—This Bill of Rights applies to acts done— 10

(a) By the legislative, executive, or judicial branches of the government of New Zealand; or

(b) By any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law. 15

4. Justified limitations—The rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

5. Interpretation consistent with Bill of Rights to be preferred—Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning. 20

6. Attorney-General to report to Parliament where Bill appears to be inconsistent with Bill of Rights—Where any Bill is introduced into the House of Representatives, the Attorney-General shall,— 25

(a) In the case of a Government Bill, on the introduction of that Bill; or 30

(b) In any other case, as soon as practicable after the introduction of the Bill,—

bring to the attention of the House of Representatives any provision in the Bill that appears to be inconsistent with any of the rights and freedoms contained in this Bill of Rights. 35

PART II

CIVIL AND POLITICAL RIGHTS

Life and Security of the Person

5 **7. Right not to be deprived of life**—No one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.

10 **8. Right not to be subjected to torture or cruel treatment**—Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.

15 **9. Right not to be subjected to medical or scientific experimentation**—Every person has the right not to be subjected to medical or scientific experimentation without that person's consent.

10. Right to refuse to undergo medical treatment—Everyone has the right to refuse to undergo any medical treatment.

Democratic and Civil Rights

20 **11. Electoral rights**—Every New Zealand citizen who is of or over the age of 18 years—

- 25 (a) Has the right to vote in genuine periodic elections of members of the House of Representatives, which elections shall be by equal suffrage and by secret ballot; and
- (b) Is qualified for membership of the House of Representatives.

30 **12. Freedom of thought, conscience, and religion**—Everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.

13. Freedom of expression—Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

35 **14. Manifestation of religion and belief**—Every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private.

15. Freedom of peaceful assembly—Everyone has the right to freedom of peaceful assembly.

16. Freedom of association—Everyone has the right to freedom of association.

17. Freedom of movement—(1) Everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand. 5

(2) Every New Zealand citizen has the right to enter New Zealand.

(3) Everyone has the right to leave New Zealand. 10

(4) No one who is not a New Zealand citizen and who is lawfully in New Zealand shall be required to leave New Zealand except under a decision taken on grounds prescribed by law.

Non-Discrimination and Minority Rights

18. Freedom from discrimination—(1) Everyone has the right to freedom from discrimination on the ground of colour, race, ethnic or national origins, sex, marital status, or religious or ethical belief. 15

(2) Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of colour, race, ethnic or national origins, sex, marital status, or religious or ethical belief do not constitute discrimination. 20

19. Rights of minorities—A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practice the religion, or to use the language, of that minority. 25

Search, Arrest, and Detention

20. Unreasonable search and seizure—Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise. 30

21. Liberty of the person—Everyone has the right not to be arbitrarily arrested or detained. 35

22. Rights of persons arrested or detained—(1) Everyone who is arrested or detained—

- (a) Shall be informed at the time of the arrest or detention of the reason for it; and
- (b) Shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and
- 5 (c) Shall have the right to have the validity of the arrest or detention determined without delay by way of *habeas corpus* and to be released if the arrest or detention is not lawful.
- (2) Everyone who is arrested for an offence has the right to
- 10 be charged promptly or to be released.
- (3) Everyone who is arrested for an offence and is not released shall be brought as soon as possible before a court or competent tribunal.
- (4) Everyone who is arrested or detained for any offence or
- 15 suspected offence shall have the right to refrain from making any statement and to be informed of that right.
- (5) Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.

20 **23. Rights of persons charged**—Everyone who is charged with an offence—

- (a) Shall be informed promptly and in detail of the nature and cause of the charge; and
- (b) Shall be released on reasonable terms and conditions
- 25 unless there is just cause for continued detention; and
- (c) Shall have the right to consult and instruct a lawyer; and
- (d) Shall have the right to adequate time and facilities to prepare a defence; and
- (e) Shall have the right, except in the case of an offence
- 30 under military law tried before a military tribunal, to the benefit of a trial by jury when the penalty for the offence is or includes imprisonment for more than 3 months; and
- (f) Shall have the right to receive legal assistance without cost
- 35 if the interests of justice so require and the person does not have sufficient means to provide for that assistance; and
- (g) Shall have the right to have the free assistance of an
- 40 interpreter if the person cannot understand or speak the language used in court.

24. Minimum standards of criminal procedure—
Everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights:

- (a) The right to a fair and public hearing by an independent and impartial court:
- (b) The right to be tried without undue delay:
- (c) The right to be presumed innocent until proved guilty according to law: 5
- (d) The right not to be compelled to be a witness or to confess guilt:
- (e) The right to be present at the trial and to present a defence:
- (f) The right to examine the witnesses for the prosecution and to obtain the attendance and examination of witnesses for the defence under the same conditions as the prosecution: 10
- (g) The right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty: 15
- (h) The right, if convicted of the offence, to appeal according to law to a higher court against the conviction or against the sentence or against both: 20
- (i) The right, in the case of a child, to be dealt with in a manner that takes account of the child's age.

25. Retroactive penalties and double jeopardy—(1) No one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence by such person under the law of New Zealand at the time it occurred. 25

(2) No one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again.

26. Right to justice—(1) Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law. 30

(2) Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination. 35

(3) Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals. 40

PART III

MISCELLANEOUS PROVISIONS

5 **27. Other rights and freedoms not affected**—An existing right or freedom shall not be held to be abrogated or restricted by reason only that the right or freedom is not included in this Bill of Rights or is included only in part.

10 **28. Application to legal persons**—Except where the provisions of this Bill of Rights otherwise provide, the provisions of this Bill of Rights apply, so far as practicable, for the benefit of all legal persons as well as for the benefit of all natural persons.