

New Zealand Bill of Rights (Right to Lawfully Acquired Property) Amendment Bill

Member's Bill

Explanatory note

General policy statement

Importance of property rights

Property rights are fundamental in liberal property owning democracies such as New Zealand. This Bill proposes to add a 'right to property' into the New Zealand Bill of Rights Act 1990 (NZBORA).

Adding a right to property would bring NZBORA into line with international instruments. For example:

Article 17 of the Universal Declaration of Human Rights

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

Article 17(1) of the Charter of Fundamental Rights of the European Union

- (1) Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

Reserve Bank of New Zealand (C5) sector statistics informs us that up to half a trillion dollars of debt is now secured against property. This matter is not only an important democratic matter, but an important economic one as well.

In their Legislation Guidelines (2021), the Legislation Design and Advisory Committee recognise the importance of property rights:

“People are entitled to the peaceful enjoyment of their property (which includes intellectual property and other intangible property). The law actively protects property rights through the criminalisation of theft and fraud and through laws dealing with trespass, and other property rights. The Government should not take a person’s property without good justification. A rigorously fair procedure is required and compensation should generally be paid. If compensation is not paid, there must be cogent policy justification (such as where the proceeds of crime or illegal goods are confiscated).”

The Constitutional Advisory Panel, in its 2013 report, *A Report on a Conversation / He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa*, recommended that the Government set up:

“a process, with public consultation and participation, to explore in more detail the options for amending the Act to improve its effectiveness such as [...] adding economic, social and cultural rights, property rights and environmental rights.”

This Bill provides an opportunity for that public consultation and participation in relation to a right for property, and for the principles identified in the Legislation Guidelines to be expressed in NZBORA.

Adding property rights to NZBORA

This Bill proposes framing the right to property as follows:

- (1) Everyone has the right to own and use their lawfully acquired property, whether they own the property individually or in association with others.
- (2) Everyone has the right not to be deprived of their lawfully acquired property except on such grounds that are established by law and with reasonable compensation.

Formulated this way, the right proposed by this Bill—

- protects the right to lawfully acquired property. It does not extend to property acquired by illegal means:
- protects the right to property owned individually and property owned in association with others:
- secures the right not to be deprived of property except on such grounds that are established by law and with reasonable compensation.

There have been 2 previous attempts to amend the NZBORA to include a right to property (via Bills introduced in 1997 and 2005 respectively). This Bill differs from those earlier Bills in that it expressly provides that compensation should be reasonable.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the 28th day after the day on which it receives the Royal assent.

Clause 3 identifies the New Zealand Bill of Rights Act 1990 as the Act being amended.

Clause 4 inserts into that Act *new section 11A* which provides for a right to lawfully acquired property.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the New Zealand Bill of Rights (Right to Lawfully Acquired Property) Amendment Act **2023**.

2 Commencement

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This Act comes into force on the 28th day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the New Zealand Bill of Rights Act 1990 (the **principal Act**).

4 New section 11A and cross-heading inserted

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Immediately after section 11, insert:

*Property rights***11A Right to lawfully acquired property**

- (1) Everyone has the right to own and use their lawfully acquired property, whether they own the property individually or in association with others.
- (2) Everyone has the right not to be deprived of their lawfully acquired property except on such grounds that are established by law and with reasonable compensation. 5