

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 17 July 1990

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Right Hon. Geoffrey Palmer

NEW ZEALAND BILL OF RIGHTS

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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

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. 10

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

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(2) This Act shall come into force on the 28th day after the date on which it receives the Royal assent. 15

PART I

GENERAL PROVISIONS

2. Rights affirmed—The rights and freedoms contained in this Bill of Rights are affirmed. 20

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

- (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. 25

New

3A. Other enactments not affected—No court shall, in relation to any enactment (whether passed or made before or after the commencement of this Bill of Rights),— 30

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- 5 (a) Hold any provision of the enactment to be impliedly repealed or revoked, or to be in any way invalid or ineffective; or
- (b) Decline to apply any provision of the enactment—
by reason only that the provision is inconsistent with any provision of this Bill of Rights.

10 **4. Justified limitations**—Subject to **section 3A** of this Bill of Rights, 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.

15 **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,—

- (a) In the case of a Government Bill, on the introduction of that Bill; or
- 25 (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.

PART II

30 CIVIL AND POLITICAL RIGHTS

Life and Security of the Person

35 **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.

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.

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. 5

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

Democratic and Civil Rights 10

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

(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 15

(b) Is qualified for membership of the House of Representatives.

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. 20

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. 25

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. 30

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. 35

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

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

5 (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

10 **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.

Search, Arrest, and Detention

25 **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.

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

30 **22. Rights of persons arrested or detained**—(1) Everyone who is arrested or (*detained*) who is detained under any enactment—

- 35 (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
- (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 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.

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(4) Everyone who is arrested or detained for any offence or suspected offence shall have the right to refrain from making any statement and to be informed of that right.

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(4) Everyone who is—
 (a) Arrested; or
 (b) Detained under any enactment—
 for any offence or suspected offence shall have the right to refrain from making any statement and to be informed of that right.

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(5) Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.

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

- (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 unless there is just cause for continued detention; and 25
- (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 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 30
- (f) Shall have the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance; and 35

- (g) Shall have the right to have the free assistance of an interpreter if the person cannot understand or speak the language used in court.

24. Minimum standards of criminal procedure—

- 5 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:
 - 10 (c) The right to be presumed innocent until proved guilty according to law:
 - (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:
 - 15 (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:
 - 20 (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:
 - (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:
 - 25 (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

- 30 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.
 - (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

- 35 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.
 - 40 (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.

(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. 5

PART III

MISCELLANEOUS PROVISIONS

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. 15