

Public Open Letter

Failure of the Royal Commission Phase Two Report to Address Non-Derogable Rights

Date: 12 March 2026

To:

The Rt Hon Christopher Luxon
Prime Minister of New Zealand

And Honourable Ministers of the Crown

Dear Prime Minister and Honourable Ministers,

This public open letter concerns an important constitutional distinction within human rights law that is directly relevant to the Royal Commission's Phase Two Report.

Under both New Zealand law and international human rights law, some rights may be subject to lawful limitation by the State, but other rights are recognised as non-derogable rights. These are fundamental protections that cannot be suspended, limited, or overridden by the State under any circumstances, including during periods of public emergency.

The concern addressed in this letter arises from the failure of the Royal Commission's Phase Two Report to engage at all with those non-derogable protections in circumstances where state-directed public health actions resulted in serious injury and death.

The protection of human life from actions of the State is one of the most fundamental obligations recognised in both domestic and international law. Where state-directed actions result in serious injury or death, those actions engage the most serious legal protections available within the New Zealand constitutional order.

The Phase Two Report of the Royal Commission acknowledges that the Comirnaty vaccine can cause myocarditis, which may, and in some cases did, lead to serious heart injury and the death of New Zealanders. While the report describes this outcome as rare—wrongly in our view, given the medical understanding that began to accrue early in the vaccination programme and which was also presented to the Commissioners—it does not sufficiently examine the medical science relating to the causal pathway or the broader implications of that risk. This is in part because the Commission did not meaningfully engage with independent medical science, which by virtue of its detail better explains the incidence of conditions such as myocarditis following vaccination.

The relevant fact, however, is that we submit that, in part through the use of mandates, lockdown restrictions, employment conditions, and other coercive measures, the vaccine was

administered to the population on a mass basis at the direction of public officials who either knew, or ought reasonably to have known, that myocarditis was a possible outcome. In those circumstances the resulting harm engages the non-derogable rights protected under both domestic and international law and materially alters the considerations relevant to justified limitations on other rights. If such limitations have the effect of enabling serious harm or injury, it is difficult to see how those limitations could be demonstrably justified. Justice Watch New Zealand respectfully submits that this is likely to be the situation.

The human consequences of this issue are not theoretical. The Royal Commission records that officials had become aware of the likelihood of vaccine-associated myocarditis in some individuals during 2021. On 16 November 2021, 26-year-old Rory Nairn died from vaccine-induced myocarditis. That death occurred after the point at which the risk of myocarditis had been recognised by authorities.

Where serious heart injury or death occurs as a consequence of a government-directed medical intervention, the resulting harm engages fundamental protections recognised across multiple sources of law.

The protection of individuals from actions of the State that result in death or serious injury is not founded upon a single legal rule. At least three separate doctrines and principles of law operate concurrently to protect individuals from such outcomes:

1. The New Zealand Bill of Rights Act 1990
2. The International Covenant on Civil and Political Rights
3. New Zealand common law principles governing the exercise of State power

Each of these independently requires the State and its officials to respect and protect the life and fundamental rights of individuals.

New Zealand Bill of Rights Act 1990

During the COVID-19 pandemic the Government and its officials were bound by law to ensure that their actions in response to the pandemic did not violate sections 8 and 9 of the New Zealand Bill of Rights Act 1990. Under section 3 of the Act, these obligations apply directly to the executive branch of government and to all public authorities exercising statutory powers.

Section 8 protects the right not to be deprived of life.

Section 9 protects the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment.

These rights are recognised as fundamental protections. In particular, section 9 has been recognised by the Supreme Court as a right that is not subject to reasonable limits. Public

authorities therefore remained under a continuing legal obligation to ensure that public health measures were exercised consistently with these protections.

International Covenant on Civil and Political Rights

These protections are reinforced by New Zealand's obligations under international law.

New Zealand is a State Party to the International Covenant on Civil and Political Rights (ICCPR).

The Covenant is also publicly referenced by the New Zealand Ministry of Justice, which informs New Zealanders through its official website that the Covenant protects fundamental rights including the right to life and protection from cruel, inhuman or degrading treatment.

Article 6 of the Covenant provides:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 4 further provides that even in a time of public emergency threatening the life of the nation, States may derogate from their obligations only to the extent strictly required by the exigencies of the situation.

Critically, Article 4 expressly prohibits any derogation from Article 6.

The same position is further clarified by the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1984). Under the heading D. Non-Derogable Rights, Principle 58 provides:

No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant's guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not to be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion. These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation.

The Siracusa Principles therefore confirm that the right to life and the associated protections against cruel, inhuman, or degrading treatment remain fully operative even in the context of a proclaimed national emergency.

New Zealand Common Law

The same principle is reflected in New Zealand common law.

In **Fitzgerald v R [2021] NZSC 131**, the Supreme Court confirmed that both Parliament and the courts are bound by the New Zealand Bill of Rights Act 1990. The Court held that legislation should not be interpreted or applied in a manner that requires the imposition of punishment that breaches section 9 of the Act, which protects individuals from cruel, degrading, or disproportionately severe treatment or punishment.

Failure of the Royal Commission to Address These Protections

Upon studying the Commission's report, it is profoundly concerning that the Commissioners have failed to address these protections in the context of state actions which have resulted in myocarditis and other serious illness.

There is no **meaningful consideration** of:

- section 8 of the New Zealand Bill of Rights Act (right to life)
- section 9 (protection from cruel, degrading, or disproportionately severe treatment)
- the corresponding protections contained in the International Covenant on Civil and Political Rights

In contrast, the report contains extensive discussion of the Government's powers to justify limitations on other rights during the pandemic.

The law is clear that these protections remain operative even during a proclaimed emergency threatening the life of the nation. They exist precisely to ensure that the exercise of public power does not result in serious harm or death without lawful accountability. The death of 26-year-old Rory Nairn is a tragic example of the human consequences that arise when state actions engage these fundamental protections.

Accordingly, the failure of the Royal Commission to address these protections in circumstances where state-directed actions resulted in serious injury and death must ultimately be regarded as a serious and material failure of the report.

This omission is significant not only in retrospect but also in the context of the Commission proposing a framework for how the State should respond to future pandemics.

Request for Government Action

As a consequence of these matters, we ask the Government to formally recognise that violations of these protections may have occurred during the pandemic period and to ensure that those circumstances are directed through the normal channels of lawful response.

Where individuals possessed knowledge of risks and nevertheless continued actions in violation of those protections, resulting in serious injury or death, the law recognises that such conduct may give rise to criminal liability.

In many cases the officials responsible were exercising statutory powers relating to public health and therefore carried corresponding legal duties to act consistently with the protection of fundamental rights.

Where serious injury or death was a foreseeable consequence of those actions, the rule of law requires that the appropriate investigative and prosecutorial processes be engaged.

Accordingly, we respectfully request that the Government:

1. Formally recognise that the protections contained in section 8 and section 9 of the New Zealand Bill of Rights Act 1990, together with the corresponding protections contained in the International Covenant on Civil and Political Rights, are engaged by the circumstances identified in the Royal Commission Phase Two Report.
2. Address the omission in the Royal Commission's report concerning the absence of analysis of these protections.
3. Confirm what steps will be taken to ensure that potential violations of these protections are examined through the ordinary processes of legal accountability.
4. Ensure that any conduct which may give rise to criminal liability, particularly where knowledge of risk and continued action resulted in serious injury or death, is directed through the appropriate investigative and prosecutorial processes.

Yours sincerely,

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