

April 8, 2026

Hon Judith Collins KC
Attorney-General
Minister for the Public Service
Parliament Buildings
Wellington 6160

Dear Attorney-General Collins,

RE: The 2026 Code of Conduct – Systemic Erosion of BORA and Accountability

We are writing to express serious concern about the newly issued *Code of Conduct for the Public Sector* (effective 30 March 2026). As both Minister for the Public Service and Attorney-General, you hold responsibility for both the Code's content and the integrity of the New Zealand Bill of Rights Act 1990 (BORA). The Code, in our view, fails that responsibility.

As you ought to be aware, NZDSOS's entire advocacy platform has arisen from egregious abuses of New Zealand citizens – abuses that make plain a single, salient fact: just when rights-protective legislation was most needed, it was seen by some as an inconvenience and swept away, ultimately to achieve the mass vaccination imperative. Just at the time public awareness of avoidable vaccine harms is increasing, the new Code seems to affirm that systemic mechanisms, still in play, are disabling our protections – especially the ones Sir Geoffrey Palmer envisaged for us all. A titan of constitutional law and political office, he wrote our Bill of Rights. Now, his legacy is being dismantled.

In short: BORA Has Been Rendered Invisible

The Public Service Code is issued under your authority, as a Minister whose own KC is honorary – a title of grace, not of the courtroom. Sir Geoffrey



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Palmer's KC was earned in the trenches of constitutional law. There is a sort of symmetry there, though not the kind that inspires confidence.

BORA is mentioned once only in 19 pages (page 10) of the new Code – but that reference describes it as a **source of personal political rights for public servants**, *not* as a constraint on official action.

Nowhere does the Code:

Require officials to act consistently with BORA

Reference Section 5 (limits on rights must be demonstrably justified)

Reference Section 6 (prefer rights-consistent interpretations)

Acknowledge Section 3(b) (BORA applies to all public functions)

By contrast, the Code explicitly references the Public Service Act, Official Information Act, Privacy Act, Protected Disclosures Act, and even the Flags, Emblems, and Names Protection Act. BORA's absence is not an oversight.

The Attorney-General's Role - and Why Your Predecessor Failed It

The Attorney-General is not merely a Minister. The role carries a unique constitutional duty as the principal law officer of the Crown, charged with safe-guarding the rule of law and acting as a "public defender" of rights within government. Section 7 of BORA explicitly requires the Attorney-General to bring inconsistent bills to Parliament's attention.

Your predecessor, the Hon David Parker, failed this duty during covid-19. He claimed legal professional privilege over Crown Law advice to his officials, shielding it from public scrutiny and making a mockery of 'demonstrable justification'. When the Epidemic Response Committee sought to summons that advice, Parker referred the Committee chair to the Privileges Committee for a "constitutional outrage" – and offered only a confidential briefing that would have gagged MPs from speaking publicly. No workings were ever produced to show *why* the rushed COVID-19 Response Act's limitations on rights were demonstrably justified under BORA Section 5.



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Everything that has bashed New Zealand, including *extreme* and on-going health harms, was predicated on Parker's nebulous say-so. And when the High Court found the first nine days of lockdown breached BORA, Parker dismissed it as a "minor imperfection" rather than a constitutional failure.

We had hope your tenure would resuscitate the public defender aspect of the role - transparency, publication of legal advice where possible, and rights justified in plain sight. The 2026 Code of Conduct, by rendering BORA invisible to public servants, suggests the opposite.

Why This Matters to Us: BORA Side-Stepped in Practice

Clearly then, our concern is not just theoretical. Through critical, public-protecting litigation brought by our group NZDSOS - and through observing the disciplinary proceedings faced by healthcare workers during the covid-19 response - we have watched BORA being clumsily side-stepped by judges and tribunals time and time again. However, honourable mention should be made of the employment and district courts, where workers' rights legislation and doctors' fiduciary obligations have retained some respect still. But we were dismayed at the judgements in the cases of intense public health interest we took to the senior courts, such as challenging vaccine mandates which breached bodily autonomy (and the right not to be deprived of life in some cases); against compulsory fluoridation despite strong evidence of brain damage to babies; and Medical Council orders which forced unethical behaviour and impacted freedom of expression for both doctors and the public.

We have seen the discipline of BORA's framework (Section 5's requirement that **limits be demonstrably justified**; Section 6's preference for **rights-consistent interpretations**) set aside in favour of deference to executive action. Healthcare workers, in particular, have faced disciplinary consequences for raising rights-based concerns - with no meaningful BORA scrutiny of the orders they were expected to follow, nor the punishments meted out when they couldn't, in all conscience.

This letter is not an academic exercise; rather a dispatch from the front line.



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The 2026 Code, by rendering BORA invisible to public servants at the coal face, will only deepen these problems. If officials are not trained to see BORA as a constraint on their power, and if judges have become accustomed to its absence, then the side-stepping we have already witnessed will become the new normal. The Code seems to entrench this.

A Pattern of Weakened Accountability

The BORA invisibility is not isolated. Across the Code, a consistent pattern can be seen: external accountability is replaced by internal process, independent oversight is omitted, and citizens are positioned as **recipients of services rather than holders of rights**.

The "legislation prevails" clause (page 3) creates no duty on officials to examine for relevant legislation (including BORA), no mechanism to resolve conflicts, and no reporting requirement when a conflict is perceived. Whistleblowing is channelled inward - to the organisation, then to the Commission - with no mention of the Ombudsman, the Human Rights Commission, or the courts. Professional obligations (medical, legal, ethical) are subordinated to organisational policy - an absolute hallmark of the covid era take-down of conscience in the workplace - with no independent recourse for those pressured to violate their ethics. The governing standard for official action is lowered from BORA's "demonstrably justified in a free and democratic society" to a mere "fair and reasonable." Disciplinary consequences attach to breaching the Code - but not to violating BORA. And throughout, the Code creates no enforceable rights for citizens, no cause of action, and no remedy.

This cannot be dismissed as a collection of oversights or errors; this seems by design, and blatant to boot.

The Timing: Preparing For the Next Crisis

The release of this Code is highly relevant, coming as it does at a specific moment.



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First, the Royal Commission of Inquiry into covid-19 has just reported. We witnessed its recommendations for attempting further rights erosions. This Code appears to compound that concern, as it entrenches weaker accountability, just as the RCI too attempts to disappear BORA - with no defence of it by illustrious barristers in hundreds of pages on government behaviour. How ironic then that its attempt to insulate Ministers has sent friendly fire onto certain public health employees who may have blocked, deflected or altered advice which may otherwise have protected the public.

Second, relentless health messaging continues to frame future emergencies (pandemic, fuel crisis, biosecurity) as requiring rapid, rights-restricting action. This Code ensures officials are trained to think in terms of "fair and reasonable" rather than "not demonstrably justified". Arbitrary opinion replaces proper legal and legislative scrutiny.

Third, speculation about future lockdowns - whether fuel-related or otherwise - reveals how quickly extraordinary measures can be normalised. This Code removes constitutional friction just as the next crisis evolves.

The pattern is obvious: **reduce accountability now, so it's easier to act unaccountably later.**

Your Dual Role Is Itself a Concern and OIA Request

You are the Minister for the Public Service (responsible for the Code) and Attorney-General (guardian of BORA). The Code's immunity to BORA raises an unavoidable question: **Has the Attorney-General been consulted on the Code?** If so, was advice given? If not, why not?

These are not academic questions. During the covid-19 response, your predecessor as Attorney-General (Hon David Parker) oversaw significant rights restrictions without adequate BORA scrutiny. The public was promised lessons would be learned. This Code suggests the opposite.



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What We Request

1. **Amend the Code** to include an explicit standard requiring BORA compliance, referencing Sections 3(b), 5, and 6.
2. **Reference external accountability bodies** - Ombudsman, Human Rights Commission, courts - in the whistleblowing framework.
3. **Confirm that professional obligations** (medical, legal, ethical) prevail over the Code where they conflict.
4. **Mandate regular BORA and common law rights training** for all public servants, including the pivotal Fitzgerald validation in the Supreme Court, especially of those involved in policy, enforcement, and rights-affecting decisions.
5. **Release all documents** relating to the decision to exclude explicit BORA obligations from the Code - including Cabinet papers, legal advice, internal memoranda, and correspondence. **Ms Collins, pursuant to the Official Information Act 1982, we request these documents formally and ask that they be provided in full.**
6. **Refer the Code** to the Ombudsman and Human Rights Commission for independent review.
7. **As ever, we ask acknowledgement of the specific harms suffered by the vaccine-damaged, and unvaccinated New Zealanders** - including healthcare workers, teachers, police and Defence Force personnel - who lost employment, registration, or access to public spaces under policies that were never demonstrably justified under BORA Section 5. A first step toward restoring public trust would be an independent review of these policies, with reparations where rights violations are found.



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Conclusion

The covid-19 pandemic was a constitutional stress test and, by many measures, New Zealand failed. Most damaging was its failure to protect

human rights absolutes. A proper response would have strengthened rights-based accountability, but the 2026 Code does the opposite.

It prepares the public service to do it all again, but harder - with fewer constraints, less scrutiny, and BORA rendered invisible.

That is not good governance, to say the least. We would observe, yet again, that beyond the boundaries of human rights law the Crimes Act lies waiting - unyielding and implacable.

We look forward to your response, and to the documents requested above.

Yours sincerely,



Dr Matt Shelton and Dr Alison Goodwin
On behalf of NZDSOS members and supporters



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