SUBMISSION TO THE NZ ROYAL COMMISSION COVID-19 LESSONS LEARNED TE TIRA ĀRAI URUTĀ

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INTRODUCTION

Thank you for the opportunity to make this submission to the Royal Commission of Inquiry.

While issues like public health and the economy are vital and have rightly received a large share of attention, constitutional issues are just as important to our nation's health and future. The constitution is made up of formal rules and the culture that breathes life into them.[1] It has the authority to structure our society and our individual lives, even and ultimately to coerce us with force, and yet it depends on the people who operate it and their willingness to uphold and enhance it rather than to ignore or subvert it. The constitution is, as former Chief Justice Dame Sian Elias has said, "fragile." She went on to say: "It is like a cats'-cradle. It is easy to move a strand here and not realise the damage that is done there. It requires constant vigilance by everyone."[2]

Last year, we published a comprehensive survey of the constitutional implications of New Zealand's response to COVID-19.[3] We found that some aspects of the response should be celebrated, but others raised significant concerns. In many cases, constitutional decisions made during the pandemic highlighted, amplified, or accelerated long-running trends and weaknesses.

Acknowledging your future-focused approach, this submission highlights five constitutional lessons that should be learned from New Zealand's pandemic response:

1. Our legislative and regulatory frameworks need to be better prepared;
2. We need to restore trust and build social cohesion;

3. We need to build government capability for legal and regulatory issues;
4. We need to talk openly about constitutional change;
5. We need to restore religious freedom.

We have emphasised the last issue, religious freedom, as it has received less attention elsewhere.

Noting your Terms of Reference, we have not commented on issues outside their scope, like the success of Parliament's Epidemic Response Committee.[4]

The content of this submission is largely taken from our research paper, and we invite you to refer to that paper for more detail on the issues raised here and for discussion of a number of other relevant issues. We have previously sent this paper to the Royal Commission.

1. OUR LEGISLATIVE AND REGULATORY FRAMEWORKS NEED TO BE BETTER PREPARED

Because constitutions include culture, they are influenced by factors like historical memory—or lack thereof. The pandemic was widely, but wrongly, described as "unprecedented." This matters because "unprecedented" situations are more likely to draw unprecedented responses. Worse, treating situations as "unprecedented" excuses a lack of planning—by definition, it is almost impossible to prepare for something we have never encountered before.

When we understand that emergencies like pandemics are extraordinary but still within the realm of normal human experience, we can respond proportionately and we can recognise that we need to be proactive and plan for the inevitable.

Our response to COVID-19 revealed that New Zealand is not very good at risk management, part of what Sir Peter Gluckman, former Chief Science Advisor to the Prime Minister, and Dr Anne Bardsley ascribe to "the general short-termism that dominates the policy community and within New Zealand society."[5] The High Court found that successive governments had failed to use the power given by the Epidemic Preparedness Act 2006 to create proactive regulations, so that during the pandemic the government relied on reactive Immediate Modification Orders which allow Ministers to change statutes passed by Parliament (commonly known as "Henry VIII clauses").[6] This undermines a fundamental constitutional safeguard: that Parliament passes laws, not the Government, because Parliament is legitimate and accountable in ways that the Executive is not. The same failure to prepare was revealed by another High Court case which found that the provisions of the Medicines Act 1981 used to approve the Pfizer vaccine for use in New Zealand were out of date: "inapt," "unclear and incoherent," and "an accident waiting to happen."[7]

Governments' failure to plan presumably contributed to the torrent of laws and regulations that were passed to deal with COVID-19 issues. In the immediate aftermath of the emergency response, the Parliamentary Counsel Office listed 23 Acts, one Bill, over 300 orders and regulations, and seventeen Gazette Notices under the heading "COVID-19 legislation."[8] Even specialists would have a hard time keeping up with that volume. The vast majority of the public will simply rely on whatever a government website tells them they need to do, which strengthens the hand of the Executive and undermines Parliament's position and the rule of law.

In a paper for the Law Commission, Professor Janet McLean KC identified that New Zealand has been too reliant on "bespoke emergency legislation," passed under urgency and in response to specific emergencies. She provides a comprehensive description of a framework of "standing rules" that can be enacted now so they can be triggered when an inevitable future emergency arises.[9] This proactive approach would allow us to plan and legislate without the immediate pressure of an emergency, which allows for mature reflection, public input, and choices that minimise the

risk of abuse of power. As Professor McLean says, "This may well be the golden hour in which to prepare the legal powers and constraints necessary for the next pandemic."[10]

2. WE NEED TO RESTORE TRUST AND BUILD SOCIAL COHESION

Public power needs to be seen as legitimate, and this depends on trust in the people who wield that power. Trust was high at the start of the pandemic, but it was undermined by the attitudes of some of our leaders. The Attorney-General, for example, spoke confidently of requiring "the unwilling to do what the many were or would do of their own volition." If they would not, he said, "there will be things you miss out on" because "we should not let the choices of a few hold-back [sic] New Zealand's progress towards a safer and freer future."[11] He may have been taking his lead from the Prime Minister, who seemed remarkably untroubled that her Government's policies were creating what she acknowledged to be a two-tier society.[12]

Whether on their own initiative or following the Government's example, the public attitude was also, on the whole, light on empathy and punitive in its tone towards the hesitant, the sceptical, or the merely questioning. As a result, the High Court made some extraordinary name suppression decisions; in one of them, Cooke J considered that suppression was necessary to ensure access to justice in the face of "public condemnation."[13] In another, Palmer J commented on the "socially divisive" nature of the debate about vaccination, saying: "Sadly, the applicants' concerns about bullying, harassment, and vilification of themselves and their family members may have foundation. I do not entirely discount the possibility of physical or professional consequences for them, in the current climate."[14]

The Government also eroded public trust by legislating too fast and undermining the usual safeguards of Opposition scrutiny and public input on proposed legislation. In particular, the crucial COVID-19 (Vaccinations) Legislation Bill was passed in a way that prominent public law academics described as a "constitutional disgrace", one that seemed almost reckless about the prospect of alienating those sceptical of vaccination.[15] Tiana Epati, President of the New Zealand Law Society, took the unusual step of writing to the Government to critique the process, particularly the lack of opportunity for public engagement, used to pass a Bill that granted "expansive powers that may be exercised with little or no democratic scrutiny" and that "passed through the House in 24 hours." Describing the process as "constitutionally unsound," Epati pointed out that this can undermine public confidence and trust.[16]

This is part of a long-standing problem affecting governments of all stripes. The Legislation Design and Advisory Committee has commented on a growing trend to compress "timelines for each stage of the policy and legislative process. … there appears to be an ever increasing expectation that all legislation can be expedited all at once."[17] It is worth recalling that in the early stage of the pandemic response, Parliament, acting under urgency, passed the wrong version of a Bill that accidentally created a loan scheme for businesses.[18]

Acknowledging these issues is the first step towards fixing them. We need to admit that many of our neighbours were treated badly during the pandemic, and that we need to foster a Parliamentary culture that understands the importance of respecting constitutional safeguards even—indeed, especially—in emergencies.

3. WE NEED TO BUILD GOVERNMENT CAPABILITY FOR LEGAL AND REGULATORY ISSUES

Some of the decisions made during the pandemic revealed that key public leaders, and the officials who advise them, did not have an adequate grasp of important legal and regulatory issues.

Perhaps the most obvious example is the initial lockdown that began on 25 March 2020. During this time, not only the Police Commissioner but the Prime Minister, speaking with "the full authority of her office and the State," told New

Zealanders that they must remain in their homes or face enforcement action.[19] However, those directives went beyond the requirements of the relevant order issued by the Director-General of Health and were therefore unlawful until a new order was issued on 3 April 2020. It is frankly staggering that some of the most powerful people in the country, including the Prime Minister, supported by all their advisors and public servants, could have confined the entire population to their homes without first ensuring they had the actual legal authority to do so.

In addition to that first lockdown order, the Ministry of Health also issued a number of other orders under section 70 of the Health Act 1956. Reviewing 2021's section 70 orders, Parliament's Regulations Review Committee considered that most of those orders had problems, including references to online information that did not exist.[20] Because not all orders had been published, the Committee was not even sure it had been able to fulfil its duty to scrutinise all the orders that had been made.[21]

The issues were not confined to section 70 orders. In three MIQ cases, officials failed to apply the actual criteria of the orders they were supposed to be implementing. In one, a son applied three times for compassionate release from MIQ to visit his dying father and was declined each time based on a framework published on a government website which did not accurately reflect the legal position.[22]

These cases reveal an urgent need to improve the government's capability to understand the law that they are meant to apply and enforce.

4. WE NEED TO TALK OPENLY ABOUT CONSTITUTIONAL CHANGE

New Zealand's constitution changes by "pragmatic evolution."[23] That is, change does not happen by planned grand design, but through the accumulation of decisions made, problems resolved, tweaks here and there, and the occasional bold but uncoordinated step.[24] This has many advantages: it is flexible, practical, humble, and recognises and releases pressure before it builds up to dangerous levels. But there are also risks: that we do not recognise or acknowledge that real change is happening until it has already taken place, and that change can happen without proper conversation.

Our COVID-19 response accelerated and amplified change that had already begun. The most obvious example is in relation to co-governance. During the 2020 lockdown, concerns about travellers spreading COVID-19 caused some communities to establish checkpoints and roadblocks. Many of these checkpoints were created by iwi wanting to protect their rohe.[25] Following controversy about the legal status of these measures, Parliament amended the law to allow someone supervised by a Police officer to stop vehicles at a checkpoint if they are recognised by the Police Commissioner as a Māori warden, a nominated iwi representative, or a "community patroller."[26] But this raised as many questions as it resolved: how close does Police supervision have to be, who nominates iwi representatives and what training do they have, and what is a "community patroller" given that the Act does not define the term? Unhelpfully, none of these questions were canvassed by the Attorney-General when he reported to Parliament on the amendment's consistency with the Bill of Rights Act.[27]

Although these questions remained unanswered, they encouraged further moves towards co-governance—there were reports that the Iwi Chairs Forum was seeking "greater legal recognition" for rāhui, temporary and localised restrictions on things like resource use or access to a place, justified partly by analogy to COVID-19 restrictions.[28]

This is the sort of constitutional change that should be discussed, not merely imposed. As the most recent election campaign and current political events reveal, we badly need to rediscover how to re-engage with one another in good faith, listening and not just speaking, striving to hear each other's hopes and aspirations and united in our common desire for a good future in and for this land.

5. WE NEED TO RESTORE RELIGIOUS FREEDOM

We all have to ask ourselves questions about the meaning and purpose of life, the existence of truth, and the source of moral order, and live with the answers. Engaging with these issues is part of being human and living in society. Recognising this reality, freedom of thought, conscience, religion and belief are fundamental human rights and protected by the Bill of Rights Act.[29] It was, therefore, disturbing to see how religious freedom was treated during our pandemic response: either left out completely or treated in a way that undermined its status as a constitutional right.

To begin with, rights to conscience and religious freedom were overlooked by the Government on more than one occasion. These rights were entirely omitted from the Ministry of Justice's review of the COVID-19 Public Health Response Bill (CPHR Bill) in May 2020. Advising the Attorney-General on the Bill's consistency with the Bill of Rights Act, the Ministry considered eight rights and freedoms, but not religious freedom.[30] Religious freedom fell off the radar again in November 2021 when the Ministry reviewed the COVID-19 (Vaccinations) Legislation Bill.[31] This is despite the fact that both Bills clearly limited religious freedom—for example, the CPHR Bill restricted faith-based (and other) gatherings, and the Vaccinations Bill infringed on the religious objections to COVID-19 vaccination held by some.[32]

Parliament also failed to consider the rights when the Finance and Expenditure Committee was conducting its Inquiry into the CPHR Act. The Committee considered how the Act impacted "the dignity of marae"[33] but not the dignity of other institutions of civil society, like churches, mosques, or temples.

Religious freedom also slid out of view in the High Court and Court of Appeal in the leading case of *Borrowdale v Attorney-General*. Challenging the legality of the 2020 lockdowns, Borrowdale argued that the right to manifest religion had been limited, along with other rights.[34] However, the High Court considered, rather generally, that the lockdown powers "engage a number of rights,"[35] and its ultimate declaration that the lockdown was indeed unlawful singled out its limitation of the rights to freedom of movement, assembly, and association.[36] The Court of Appeal focused on those same three rights.[37]

It was, therefore, left to individual believers and religious associations to seek protection in court, where they received a mixed reception in three particular cases.

The first, *NZHPA v Attorney-General*, was not COVID-19-related but was contemporaneous with the response to the pandemic and was cited in later COVID-19 cases. The case included an argument that requiring a doctor to tell a woman seeking an abortion where she could access that service infringed that doctor's right to manifest religion, if the doctor believed that providing that information would make them complicit in the abortion. Ellis J held that the doctor's refusal did not qualify for protection as a manifestation of religion because all that was required was to provide information, not a formal referral.[38]

In reaching that decision, Her Honour was prepared to take note of orthodox Catholic teaching on abortion but doubted that it represented the position of all Catholics or other Christians: "I would imagine, for example, that many adherents of that faith now honour a good part of it only in the breach."[39] The two most striking features of this case are that Ellis J essentially substituted her own assessment of what religious belief or conscience require in place of an individual doctor's assessment, and that she effectively required unanimous adherence to a religious belief before it qualifies for Bill of Rights Act protection. Both render the right almost worthless.

By contrast, a COVID-19 case decided a few months later gave the right to manifest religion a much more meaningful treatment. In *Yardley v Minister for Workplace Relations and Safety*, the High Court heard a challenge to an order requiring Police and Defence Force personnel to be vaccinated. Apparently, some of those employees were

concerned the vaccine had been tested on foetal cells, potentially from an aborted foetus, and objected to vaccination on that basis. Cooke J held this engaged the right to manifest religion because it "is grounded in a core principle of the particular Christian religion and the objection to abortion." Unlike Ellis J, he held that "[t]he fact that others observing the same religion do not agree with the stance does not mean that the stance does not involve the observance of a religious belief."[40] However, this finding was not strictly essential to the ultimate decision, which also engaged the right to refuse medical treatment and ultimately rested on an assessment that the evidence did not show that the limits on these rights were justifiable.

The most recent case, *Orewa Community Church and others v Minister for COVID-19 Response*, directly challenged the impact of a COVID-19 regulation on religious believers. The regulation imposed limits on faith-based gatherings depending on whether attendees could show a vaccine certificate, affecting gatherings like church services and Friday prayers at mosques. Gwyn J held that the regulation did limit the right to manifest religion under section 15 of the Bill of Rights Act. However, she concluded this was a justified limitation and that the regulation was, therefore, lawful.[41] A key reason for Her Honour's decision was that:[42]

> *the consultation with faith communities showed that many churches decided to operate with [vaccine certificates], to protect vulnerable congregants, and Professor Trebilco's evidence was that there is a range of views within the Christian community. That is relevant to the proportionality analysis. The gathering restrictions affected religious and nonreligious alike. They may be a proportionate limit on the s 15 rights of a group whose views are not widely shared.*

Of course, as Gwyn J said, "faith-based gatherings are not self-contained events."[43] We live in a society, and our choices have consequences for others—that is why rights are subject to justified limitations. But there are two troubling aspects of this decision. Like *NZHPA*, the decision suggests that religious freedom will be given less weight if there is "a range of views," that is, if adherents are not unanimous or if there is no strong consensus. This cannot be right. No group of any size is unanimous about significant issues, nor is there often a strong consensus; if the mere presence of a range of views on social and cultural controversies is enough to downgrade a right, it is worth very little in the first place. It is certainly not being treated as a fundamental human right if it can be disposed of or diluted so easily. The decision also suggests that rights should receive less protection if they are held by "a group whose views are not widely shared." This cannot be right either; in fact, it is back-to-front. Human rights are supposed to protect minorities from the power of the majority. The fewer people hold a belief, the more important human rights guarantees are.

These cases, and the lapses in law-making described earlier, represent a cross-institutional failure to take religion and religious freedom seriously. They also reflect and contribute to a broader cultural tendency to downgrade faith and its manifestations. For example, although Gwyn J in *Orewa Community Church and others* emphasised that everyone's actions affect their neighbours, this point was only used to justify restrictions on religious practice; it did not lead to any acknowledgement that the choices and actions of the majority also affect the religious minority. And Gwyn J also thought it was relevant that "the restrictions were temporary (four months)."[44] Even if that is correct—and it is arguable that gathering limits affected a much greater period—being prevented from doing something you genuinely believe your faith requires of you is a grave issue if it happens even once, let alone for several months.

We often hear about the importance of spiritual well-being, for example as represented in the Māori health framework, *Te Whare Tapa Whā*, which acknowledges that one of the four pillars of health is "taha wairua," the spiritual dimension. It is promoted in schools, throughout the health system, even by the Health Ministry.[45] It is difficult to avoid the conclusion that this is mere window-dressing when the attitude displayed in the decisions reviewed above reflects such a temporal, this-worldly view. That attitude effectively confines religious faith to the

private sphere, readily restricting it when it conflicts with the majority opinion, blind to the fact that religious believers regard the tenets of their faith as essential, not optional, and as core to their identity and their status in the world.

The worldview revealed by these decisions is not neutral—it is just as much of a faith position as any religion—and as we contemplate the possibility of future emergencies and associated restrictions, we need to honestly acknowledge that religious freedom was not respected adequately during the pandemic. Perhaps that can be the first step to treating freedom of thought, conscience, religion and belief as though it is the fundamental human right we say it is.

CONCLUSION

One of the themes that emerges from this survey is that our constitutional response to the pandemic did not treat minorities well. Whether they were vaccine-hesitant, religious believers, or members of the Kiwi diaspora locked out of "the team of five million,"[46] minorities were effectively told that the majority's interests trumped theirs. This may have been easier to accept if there had been genuine empathy for the price they were asked to pay, but all too often they were treated as outsiders by key public leaders and subject to condemnation by their neighbours.

Restoring respect for fundamental human rights will go some way to fixing this. So will passing proactive emergency laws, which can provide a better framework to respond to the next crisis and remove some of the difficulties that come from legislating reactively and in haste. And if we can improve government capability, there is a better chance that the groups and individuals interacting with the system will be treated fairly and in accordance with the law.

Lastly, and perhaps most importantly, we need a more open and accepting public discourse, one that allows healthy debate about constitutional change and that welcomes us bringing all our beliefs and values to the table. Perhaps this sounds "soft," non-constitutional even. But constitutions are about people—all the rules, institutions, ceremonies and offices are meant to advance the interests of actual flesh-and-blood human beings, and if our constitutional discourse forgets this, it is not merely arid but futile.

We hope that this submission, and the research it draws from, will help you as you consider what we can learn from New Zealand's experience with COVID-19, and how we can do better in future.

We would be happy to discuss this submission with you at your convenience, and we wish you well in your inquiry.

ENDNOTES

* CEO of Ethos, a charitable trust established to promote the human rights of freedom of thought, conscience, religion, and belief: www.ethosalliance.nz. Disclosure: my brother was the Chairperson of Parliament's Regulations Review Committee during some of the period referenced in this submission.

[1] Kenneth Keith, "On the Constitution of New Zealand: An introduction to the foundations of the current form of government," in *Department of Prime Minister and Cabinet, Cabinet Manual* (Wellington: Cabinet Office, 2017), 1; Matthew Palmer, "What is New Zealand's constitution and who interprets it? Constitutional realism and the importance of public office-holders," (2006) 17 PLR 133, 134.

[2] Sian Elias, "Towards Justice: The rule of law as 'an unqualified human good'," *Sir John Graham Lecture* (Auckland: Maxim Institute, 2018), 12.

[3] Alex Penk, *COVID and Our Constitution: How a pandemic affected our body politic and culture* (Auckland: Maxim Institute, 2022), available at https://www.maxim.org.nz/content/uploads/2022/06/WEB-Covid-and-Our-Constitution-Jun-22.pdf.

[4] Royal Commission of Inquiry (COVID-19 Lessons) Order 2022, Schedule 1, clause 6.

[5] Peter Gluckman and Anne Bardsley, *Uncertain But Inevitable: The expert-policy-political nexus and high-impact risks*, (Auckland: Koi Tū: The Centre for Informed Futures, the University of Auckland, 2021), 22.

[6] *IDEA Services v Attorney-General*, [2022] NZHC 308, [28].

[7] *Nga Kaitiaki Tuku Iho Medical Action Society v Minister of Health* [2021] NZHC 1107, [15], citing *Ministry of Health v Ink Electronic Media Ltd* HC Hamilton CRI 2004-419-84, 18 August 2004.

[8] As at 1 April 2022. Parliamentary Counsel Office, "COVID-19 legislation," http://www.pco.govt.nz/covid-19-legislation/, last accessed 4 April 2022.

[9] Janet McLean, "The Legal Framework for Emergencies in Aotearoa New Zealand," NZLC SP23, (Te Aka Matua o te Ture | Law Commission, 2022).

[10] Janet McLean, "The Legal Framework for Emergencies in Aotearoa New Zealand," para. 3.118.

[11] David Parker, "The legal and constitutional implications of New Zealand's fight against COVID", *Speech to the New Zealand Centre for Public Law,* 2 December 2021, https://www.beehive.govt.nz/speech/legal-and-constitutional-implications-new-zealand%E2%80%99s-fight-against-covid (last accessed 11 February 2022).

[12] Alex Penk, "The risks of creating a two-tier society," 13 November 2021, https://aplacetostand.substack.com/p/the-risks-of-creating-a-two-tier?s=w.

[13] *Four Aviation Security Service Employees*, [2021] NZHC 3012, [23]-[24].

[14] *Four Midwives v Minister for COVID-19 Response* [2021] NZHC 3064, [81]-[82]

[15] Andrew Geddis, "In rushing through the 'traffic light' legislation, the government has failed us", *The Spinoff*, 24 November 2021, https://thespinoff.co.nz/politics/24-11-2021/in-rushing-through-the-traffic-light-legislation-the-government-has-failed-us (last accessed 22 March 2022).

[16] Tiana Epati, "COVID-19 Response (Vaccinations) Legislation Act 2021," New Zealand Law Society, 26 November 2021.

[17] Legislation Design and Advisory Committee, "Annual Report: 1 January 2020 to 31 December 2020," June 2021, 6.

[18] Gabor Hellyer, "Assessing Parliament's Response to the Covid-19 Pandemic," (2021) *Policy Quarterly* 17(1), 22.

[19] *Borrowdale v Director-General of Health* [2020] NZHC 2090, [148], [150].

[20] Regulations Review Committee, "Briefing about orders made under section 70 of the Health Act 1956: Interim report of the Regulations Review Committee," November 2021, 4-5.

[21] Regulations Review Committee, "Briefing about orders made under section 70 of the Health Act 1956: Interim report of the Regulations Review Committee," 7.

[22] *Christiansen v Director-General of Health*, [2020] NZHC 887, [28]-[40]. The other cases are *Hattie v Attorney-General*, CIV-2019-404-303, High Court Auckland, Muir J, 8 July 2020, and *Bolton v MBIE* [2022] NZHC 2897.

[23] Matthew Palmer, "What is New Zealand's constitution and who interprets it? Constitutional realism and the importance of public office-holders," 133, citing Constitutional Arrangements Committee, *Inquiry to Review New Zealand's Existing Constitutional Arrangements: Report of the Constitutional Arrangements Committee I 24A* (Wellington, House of Representatives, 2005), 26.

[24] See, for example, the slightly surprising way in which establishment of the Supreme Court elicited a statement of New Zealand's commitment to the rule of law and Parliamentary sovereignty: Sian Elias, "Fundamentals: A constitutional conversation", (2011) 19 Waikato Law Review 1-16, 5.

[25] Finance and Expenditure Committee, *Inquiry into the operation of the COVID-19 Public Health Response Act 2020*, (Wellington: House of Representatives, July 2020), 9; RNZ, "Police and iwi to set up checkpoints on Northland/Auckland border," 2 December 2021, https://www.rnz.co.nz/news/national/457068/police-and-iwi-to-set-up-checkpoints-on-northland-auckland-border (last accessed 20 April 2022).

[26] Section 22(6) of the COVID-19 Public Health Response Act 2020, which also allows for a member of the New Zealand Defence Force and a Pasifika warden to act as an enforcement officer.

[27] He merely noted the extension of the power to stop vehicles to "enforcement officers": David Parker, "Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the COVID-19 Public Health Response Amendment Bill," 14 September 2021, [24].

[28] 1News, "Calls grow for rāhui to have greater legal recognition," 11 January 2022, https://www.1news.co.nz/2022/01/11/calls-grow-for-rahui-to-have-greater-legal-recognition/ (last accessed 5 April 2022); RNZ, "'The purpose of the rāhui is for everybody' - National Iwi Chairs Forum," 13 January 2022, https://www.rnz.co.nz/national/programmes/summer-days/audio/2018826898/the-purpose-of-the-rahui-is-for-everybody-national-iwi-chairs-forum (last accessed 2 March 2022).

[29] Sections 13 and 15 of the New Zealand Bill of Rights Act 1990.

[30] Jeff Orr, "Consistency with the New Zealand Bill of Rights Act 1990: COVID-19 Public Health Response Bill," Ministry of Justice, 11 May 2020, [3].

[31] Jeff Orr, "Consistency with the New Zealand Bill of Rights Act 1990: COVID-19 (Vaccinations) Legislation Bill," Ministry of Justice, 23 November 2021, [3].

[32] *Yardley v Minister for Workplace Relations and Safety,* [2022] NZHC 291, [49].

[33] Finance and Expenditure Committee, *Inquiry into the operation of the COVID-19 Public Health Response Act 2020*, 10.

[34] *Borrowdale v Director-General of Health* (High Court), [87].

[35] *Borrowdale v Director-General of Health* (High Court), [89].

[36] *Borrowdale v Director-General of Health* (High Court), [292].

[37] *Borrowdale v Director-General of Health* [2021] NZCA 520, [105].

[38] *New Zealand Health Professionals Alliance v Attorney-General* [2021] NZHC 2510, [109]-[110], [115].

[39] *New Zealand Health Professionals Alliance v Attorney-General*, [108], and citing US President Joe Biden's Catholicism and support for abortion at footnote 64.

[40] *Yardley v Minister for Workplace Relations and Safety,* [49].

[41] *Orewa Community Church & others v Minister for COVID-19 Response* [2022] NZHC 2026, [11]. Some of the discussion of this case has been taken from Alex Penk, "Religious freedom continues its slide down the hierarchy of protected rights," 2 September 2022, https://aplacetostand.substack.com/p/religious-freedom-continues-its-slide.

[42] *Orewa Community Church & others v Minister for COVID-19 Response,* [236].

[43] *Orewa Community Church & others v Minister for COVID-19 Response,* [282].

[44] *Orewa Community Church & others v Minister for COVID-19 Response,* [283].

[45] Ministry of Health, "Māori Health Models – Te Whare Tapa Whā," 1 December 2023, https://www.health.govt.nz/our-work/populations/maori-health/maori-health-models/maori-health-models-te-whare-tapa-wha (last accessed 16 December 2023).

[46] See *Grounded Kiwis v Minister of Health* [2022] NZHC 832.