

**‘Law and Covid-19 in New Zealand’**

**Health Law Symposium  
in honour of Prof Olivier Guillod,  
Neuchâtel, August 2021**

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**Power of New Zealand Parliament  
to enact new legislation rapidly**

- **New Zealand’s constitution similar to UK’s**
- **No entrenched constitutional limits on law-making power of NZ Parliament**
- **No federal system (a unitary state)**
- **One chamber of Parliament (unicameral)**
- **Government now has a majority in Parliament**

**Central legal issues  
in New Zealand's response to Covid-19**

- **The need for adequate public health legislation,  
*in advance***
- **Determining which government responses  
must be *authorised by law***
- **When can employers *demand* that workers  
be vaccinated?**

**The need for adequate public  
health legislation, *in advance***

- **Weaknesses in prior public health legislation**
- **Government response unlawful in some respects**

**Resolved in practice by:**

- **deferential judicial approach to review**
- **delay in hearing cases and delivering judgment**
- **rapid enactment of new legislation**

**'... trying to preserve a balance between rule-governed  
and discretionary decision-making in times of crisis.'**

***Nga Kaitiaki Tuku Iho Medical Action Society  
Inc v Minister of Health [2021] NZHC 1107  
(the ‘vaccine approval’ case)***

- **law permitted rapid approval of vaccine for use with ‘a limited number of patients’**
- **strong argument that approval of vaccine for all adults was unlawful**
- **court refused ‘interim’ relief, before full hearing**
- **giving Parliament time to change the law (and retrospectively validate the approval)**

**When must a government response to Covid be *authorised by law*?**

- **Executive ‘announcements’:**
  - **‘imperative language’**
  - **encouragement or command?**
- **When is behaviour ‘prohibited’?**
- **When are ‘rights’ limited?**
- **All limits to be ‘prescribed by law’**

**When can employers *demand*  
that employees be vaccinated?**

- **Conflict between employers' duty to:**
  - **treat employees fairly; and**
  - **promote 'health and safety'**  
(of other employees and customers)
- **So far, resolved by legislation requiring  
'border workers' to be vaccinated**

**Some References**

**Legislation:**

**Covid-19 Public Health Response Act 2020 (NZ)**

**Court judgments:**

***Borrowdale v Director-General of Health* [2020] NZHC 2090  
(under appeal)**

***Nga Kaitiaki Tuku Iho Medical Action Society Inc v Minister of Health* [2021] NZHC 1107**

**Commentary:**

**'New Zealand's legal response to Covid-19: a symposium'  
(2020) 31(4) *Public Law Review* 370-397**

**For full New Zealand bibliography see:**

**<https://www.wgtn.ac.nz/public-law/projects/covid/covid-19-and-beyond-public-law>**