



High Court of New Zealand

8 November 2021

MEDIA RELEASE

Four Aviation Security Service Employees v Minister of COVID-19 Response

MEDIA RELEASE

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The High Court has dismissed the challenge advanced by four former Aviation Security Service employees to the order made by the Minister of COVID-19 Response under the COVID-19 Public Health Response Act 2020 requiring them to be vaccinated when undertaking their border security functions.

Justice Cooke accepted that the applicants had proper arguments to be brought to the Court, and emphasised the importance of their ability to do so in an environment where those opposed to vaccination were liable to criticism. He also acknowledged that the applicants had put themselves at risk as border workers for the benefit of the public, that they had now lost their jobs, and that “they should not be thought of as any less committed to the community than any other New Zealander”.

The Court nevertheless addressed and rejected the three main arguments as to why the order was said to be unlawful.

Firstly the Court accepted that a requirement that border workers be vaccinated fell within the Minister’s powers under the Act as they were measures that contributed, or were likely to contribute to preventing the risk of an outbreak, or the spread of COVID-19. Justice Cooke nevertheless noted that it was of some surprise that such an important aspect of the response was implemented through an empowering provision which made no express reference at all to vaccination. His Honour observed that significant measures of this kind would be better suited to legislation that squarely addressed the issues. Justice Cooke further said that his decision should not be interpreted as clearing a path for more extensive use of this power for other circumstances.

Secondly the Court held that although the applicants’ fundamental right under the New Zealand Bill of Rights Act 1990 to refuse medical treatment had been limited, doing so

was demonstrably justified. The evidence showed that the Pfizer vaccine was effective in reducing symptomatic infection, serious illness and death. While the evidence was less certain on whether the vaccine limited transmission, it suggested it was likely to do so and that it was appropriate to take a precautionary approach given the seriousness of the harm caused by the spread of COVID-19.

Finally, the Court rejected the applicants' argument that the Minister had failed to take into account relevant considerations, or made an irrational decision in implementing the Order. Justice Cooke was "satisfied that the vaccine is safe and effective, is significantly beneficial in preventing symptomatic infection of COVID-19 including the Delta variant, ... it significantly reduces serious illness, hospitalisation and death" and that "it is likely to materially assist in preventing the risk of an outbreak or the spread of COVID-19 originating from border workers having contact with potentially infected persons from overseas".

The Court reserved the question of costs.