



THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

25 February 2022

MEDIA RELEASE

Yardley v Minister for Workplace Relations and Safety

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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.courtsfnz.govt.nz.

High Court sets aside vaccine mandate for Police and Defence Force.

The Decision

The High Court has upheld a challenge to a vaccine mandate covering Police and New Zealand Defence Force staff in a judgment released today. The judgment applies only to this specific mandate.

The Police and Defence Force mandate explained

The Police and Defence Force mandate was introduced by the Minister for Workplace Relations and Safety by the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021 in December 2021. It required all Defence Force personnel and all Police constables, recruits and authorised officers to receive two doses of the vaccine by 1 March 2022. It was additional to existing vaccination policies Police and Defence had already introduced internally. The Court noted that the mandate had not been imposed to prevent the spread of Covid-19. Rather, it had been implemented to ensure the continuity of Police and Defence Force services, and the public confidence in those services. Ministry of Health advice to the Government was that further mandates to prevent the spread of Covid-19 in the community were not needed.

The nature of the claim

Justice Cooke upheld the applicants' claims that two rights in the New Zealand Bill of Rights Act 1990 had been limited by the mandate — the right to refuse a medical treatment under [s 11](#), and the right to manifest religious beliefs under [s 15](#). The mandate limited the right to manifest religious beliefs as the Pfizer vaccine had at some point been tested on cells that had been derived from a human foetus, and requiring vaccination by such a vaccine was in conflict with the religious beliefs of some of the affected persons.

The Court then considered whether this limitation upon fundamental rights was reasonable, and demonstrably justified in a free and democratic society as is required by [s 5](#) of the New Zealand Bill of Rights. Having considered the relevant factors it found that it was not.

First, Justice Cooke concluded that the mandate affected only a small number of personnel. The evidence was that of an overall Police workforce of 15,682 the Order only affected 164 personnel who were unvaccinated when it came into effect, and an overall Defence workforce of 15,480 it only affected 115 personnel who were unvaccinated.

Secondly, Justice Cooke found that there was no evidence that these numbers would have been any different had the question of vaccination been left to the pre-existing vaccination policies already in existence for the Police and the Defence Force. In addition, there was no evidence that the Order had the effect of making personnel vaccinate or resign who would not otherwise have done so except for the Order.

Justice Cooke accepted that an effect on a small number of personnel could nevertheless involve a measure that was demonstrably justified if the evidence disclosed that there was risk to the continuity of Police and Defence Force services arising from this number of unvaccinated personnel. But, the expert evidence before the Court from Dr Petrovsky for the applicants, and Dr Town the Ministry of Health's Chief Science Adviser, did not establish this. Vaccination has a significant beneficial effect in limiting serious illness, hospitalisation, and death, including with the Omicron variant. But it was less effective in reducing infection and transmission of Omicron than had been the case with other variants of COVID-19.

Justice Cooke concluded that there was no real evidence that the effect of the Order on the small number of personnel made any material difference to the continuity of Police or Defence Force services. He concluded that Omicron did pose a threat to the continuity of workforces, including Police and Defence Force workforces because it was so transmissible, but that this was the case for the vaccinated as well as the unvaccinated.

In those circumstances the Court found that the significant adverse effects for those Police and Defence Force personnel who faced termination meant that the measure was not a reasonable limit on their rights demonstrably justified in a free and democratic society in accordance with s5 of the Bill of Rights. The Order was accordingly unlawful.

The Order was set aside, and the applicants entitled to seek an award of Court costs. The Court's orders are limited to the mandate relating to Police and Defence Force personnel and do not affect other mandates or the internal Police and Defence vaccination policies. Justice Cooke also specifically recorded that the Court's conclusions did not involve questioning of the effectiveness of vaccination:

I should make it clear what this case is not about. The Order being set aside in the present case was not implemented for the purposes of limiting the spread of Covid-19. Health advice was that such a further mandate was not needed for this purpose. Neither should the Court's conclusion be understood to question the effectiveness and importance of vaccination. The evidence shows that vaccination significantly improves the prospects of avoiding serious illness and death, even with the Omicron variant. It confirms the importance of a booster dose given the waning effect of the first two doses of the vaccine.

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