



## Petition of Bob McCoskrie and 87,268 others: Allow Rapid Antigen Testing for Unvaccinated Kiwis

### SUBMISSION

Petitions Committee  
Parliament Buildings  
Wellington

#### Background:

1. This submission follows an 87,269-signature petition<sup>1</sup> which states that **“We oppose the ‘no job no job’ policy, as it creates a divided New Zealand. We call on the Government to allow the use of COVID rapid antigen testing as an alternative for unvaccinated kiwis to access workplaces, schools, maraes, large gatherings and places of worship.”**<sup>2</sup>
2. Rapid antigen testing (RATs) has been used world-wide for many months and are now the primary mode of testing in New Zealand. Despite this, the Government had banned these tests under the COVID-19 Public Health Response (Point-of-care Tests) Order 2021<sup>3</sup>. Many New Zealanders are baffled by this action of the Government to be so late to employ this important tool in the fight against COVID.
3. Now that RATs are available for public use in New Zealand, we submit that these can be used as an alternative for Kiwis to keep their job or be reinstated back into the workforce. There are families across the country that have lost part or the entirety of their income. The effects of joblessness in families are catastrophic, and the division these mandates have created in society can be seen in many workplaces and amongst families and communities.

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<sup>1</sup> [www.dontdivideus.nz](http://www.dontdivideus.nz)

<sup>2</sup> [https://www.parliament.nz/en/pb/petitions/document/PET\\_118626/petition-of-bob-mccoskrie-allow-rapid-antigen-testing](https://www.parliament.nz/en/pb/petitions/document/PET_118626/petition-of-bob-mccoskrie-allow-rapid-antigen-testing)

<sup>3</sup> <https://legislation.govt.nz/regulation/public/2021/0066/latest/LMS451455.html>

4. The New Zealand Bill of Rights 1990 section 11<sup>4</sup> states “Everyone has the right to refuse to undergo any medical treatment.”
5. Considering the thousands of Kiwis that have lost their employment, the division the mandates have caused nationally, and the breach of the Bill of Rights 1990; two questions will be addressed in this submission. **Are these mandates justified? And, is this what New Zealanders want?**

### **Breach of the Bill of Rights:**

6. Contained in Justice Cooke’s Judgement on the legality of the vaccine mandate on NZDF and Police staff, I quote the following statement “The Crown accepts that the Order limits the right in s11 of the New Zealand Bill of Rights to refuse to undergo medical treatment.” He also states later in the judgement that “there is no dispute that the Order limits the right of affected workers to refuse to undergo a medical treatment.”<sup>5</sup>

### **Breach of a human being’s right to work:**

7. Lawyer Matthew Hague relied on the right to work recognised in article 23(1) of the Universal Declaration of Human Right 1948<sup>6</sup>, as well as articles 6-8 of the International Covenant of Economic, Social and Cultural Rights<sup>7</sup>, to which Justice Cooke accepted, as shown in the following quote.
8. Justice Cooke: “The associated pressure to surrender employment involves a limit on the right to retain that employment, which the above principles suggest can be thought of as an important right or interest recognised not only in domestic law, but in the international instruments. So in that sense the right to refuse to undergo medical treatment is not the only right (or significant interest) that is being limited.”
9. What then was Minister Chris Hipkins referring to when he stated this month (March 2022) on TVNZ Q&A<sup>8</sup> that “We haven’t said anybody has to be vaccinated, but we have said that to do some things to expose yourself to some other people you should have to be vaccinated to do those jobs.” If the loss of the Human Right of employment as well as the breach of the Bill of Right to refuse medical treatment is not “forcing vaccination”, the question has to be asked what is forcing vaccination in his mind?
10. Would a forced vaccination in the minds of this Government only exist if the Police came and strapped citizens down against their will? It was only September 2020 when Prime Minister Jacinda Arden agreed there would be no sanctions placed on those who do not accept a vaccination against COVID 19.<sup>9</sup>

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<sup>4</sup> s11 Bill of Rights 1990

<sup>5</sup> *Yardley v Minister for workplace relations and safety* [2022] NZHC 291 at [43]

<sup>6</sup> article 23(1) of the Universal Declaration of Human Right 1948

<sup>7</sup> articles 6-8 of the International Covenant of Economic, Social and Cultural Rights

<sup>8</sup> <https://www.youtube.com/watch?v=It1biYZdCIU>

<sup>9</sup> <https://www.newshub.co.nz/home/politics/2020/09/coronavirus-jacinda-ardern-confident-enough-kiwis-will-get-covid-19-vaccine-for-herd-immunity-without-being-forced-to.html>

11. We reiterate - this is not an “anti-vax” submission. We support vaccination in principle. However, what must be challenged is the difference between what the High Court has ruled is a breach of human rights for Police and the Defence Force, and what logic the Government stands on by saying “no one has been forced.” New Zealanders deserve a greater level of confidence in the words of their Government as lives are affected in such a profound way.

### **Breach of the Manifestation of Religion and Belief:**

12. Another breach of the Bill of Rights that was found by Justice Cooke in the NZDF and Police case was that “Every person has the right to manifest that person’s religion or belief in worship, observance, practice, or teaching.”<sup>10</sup>

13. This is found in section 15 of the Bill of Rights<sup>11</sup>. Justice Cooke has this to say in regards to a vaccine mandate for Police and NZDF. “An obligation to receive a vaccine which a person objects to... does involve a limitation on the manifestation of a religious belief in “observance, practice, or teaching” of religion contemplated by s15.” He goes on to say “The 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.”

### **Universal Breach of Human Rights:**

14. It is important to note that Justice Cooke is stating these are breaches of human rights through a “no job no job” mandate. Once deciding that these are in fact breaches of human rights, the question then is - are they justified? In the case of the NZDF and Police, they were found not to be. The rule that these are in fact breaches of human rights can be universally applied to all people that have lost their jobs. We will go on to answer why these breaches are not justified as well as what the common opinion on the mandates are among New Zealanders.

15. Justice Cooke described the process in which the mandates were ordered for the NZDF and Police, and stated “this justification for the Order seems to be close to one based on administrative convenience, which is not a compelling justification for limiting rights.” If that was the case for Government-run organisations, how much more applicable are his statements seen in the governments approach to a vast array of workplaces across New Zealand. The key being - convenience is not a justification for taking away the basic rights of people.

### **Are “no job no job” mandates justified?:**

16. Due to the removal of fundamental rights of Kiwis in order to justify their existence “no job no job” mandates must bring an incredible good to families, the economy and society as a whole in order for them to justify their existence. However, experts such as Dr Petrovski (immunologist) have presented evidence that has been accepted by the High Court that shows a very different story.

17. Judge Cooke stated in his case summary that “Dr Petrovski’s analysis is detailed, relying on a number of studies.” He also stated that “Dr Petrovski is qualified to give expert evidence on the likely

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<sup>10</sup> s15 Bill of Rights 1990

<sup>11</sup> s15 Bill of Rights 1990

effects of vaccination on the workforce. He explained in his evidence that vaccination has potential benefit in reducing the severity of disease, even with the Omicron variant. But in his view mandatory vaccination does not assist in preventing workers in affected roles contracting COVID 19, or transmitting it to others. Indeed, his view was that it may ultimately increase the spread of the virus in a workforce because of increased asymptomatic transmission by the vaccinated, or undue reliance by them on the vaccine's apparent protection. His view was that the more effective measures involved other techniques, such as the use of rapid antigen testing and isolation."

18. This advice from Dr Petrovski (an expert immunologist) states that a more effective way of facing COVID 19 is through RAT testing and isolation. The great aspect of that strategy is not only is it likely to be more effective against COVID, it doesn't come with any breach of human rights as discussed earlier (as confirmed by the High Court of New Zealand). This is what we are now starting to see from business such as Fonterra, who have taken a testing approach and kept Kiwis in work.<sup>12</sup>
19. Omicron has changed the landscape of our fight against COVID 19 as it has proven its ability to evade vaccination to a large degree. Dr George Town (Chief Science Advisor at the Ministry of Health) gave evidence in support of mandatory vaccination in the NZDF and Police case and Justice Cooke had this to say in response "I accept on the basis of Dr Town's evidence that vaccination might contribute to preventing, contracting and spreading the Delta and Omicron variants to some extent, although not nearly as much as it did against the original versions of COVID-19."<sup>13</sup>
20. This shows that the mandates that were created for past versions of COVID-19 need to be revisited. Although, having said that, mandates were a breach of the rights of New Zealanders under any strain of COVID. They are now even more difficult to justify when we see vaccinations limited ability to slow the spread of Omicron - the very purpose for which the mandates were created.
21. Justice Cooke had this to say about the illegal mandates imposed on NZDF and Police. "I am not satisfied that the Crown has put forward sufficient evidence to justify the measures that have been imposed, even giving it some benefit of the doubt."
22. The Judge concluded his statement by saying "I conclude that the Order does not involve a reasonable limit on applicants rights that can be desirably justified in a free and democratic society and that it is unlawful."
23. We submit that the thousands of New Zealanders whose jobs range from fruit pickers to university staff, truck drivers to after-hours cleaners (who have been in contact with us due to their termination) should be able to keep their job by undertaking regular RAT testing.<sup>14</sup>
24. We also submit that these mandates are not justified in a free and democratic society and that they should be considered unlawful.
25. As of the 9<sup>th</sup> of March 2022, nurses with COVID 19 can work as a last resort in COVID wards.<sup>15</sup> And yet nurses have been fired because they are unvaccinated. Is a COVID positive nurse safer in a

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<sup>12</sup> <https://www.newsroom.co.nz/pro/fonterra-repeals-vaccine-mandate-in-favour-of-daily-rapid-antigen-tests>

<sup>13</sup> *Yardley v Minister for workplace relations and safety* [2022] NZHC 291 at [91]

<sup>14</sup> <https://familyfirst.org.nz/2022/02/15/jobless-because-of-the-mandates/>

<sup>15</sup> [/www.rnz.co.nz/news/national/462940/healthcare-unions-critical-as-ministry-says-workers-with-covid-19-can-return-to-work-earlier](https://www.rnz.co.nz/news/national/462940/healthcare-unions-critical-as-ministry-says-workers-with-covid-19-can-return-to-work-earlier)

hospital than an unvaccinated nurse who has just taken a RAT test with a negative result? And yet, many nurses have lost their hard-earned careers because of these mandates.

26. It is important that New Zealand is seen to be protecting the human rights of its citizens. Our fight against COVID cannot come at the expense of the rights of our people. New Zealand has been ignoring international advice on this issue.
27. In a World Health Organisation press conference in December 2020 Dr Kate O'Brien said "I don't think we envision any countries creating a mandate for vaccination." <sup>16</sup> The UN Human Rights Council cited this press conference as it chastised the government of Cambodia last May for its vaccination mandate. <sup>17</sup>
28. The UN Secretary General has also emphasised the centrality of human rights in shaping the response to the pandemic and how any restrictions placed on human rights must be necessary, reasonable, proportionate, non-discriminatory, and take the least intrusive approach possible to protect public health. With thousands out of work and excluded from large portions of society for months with no end in sight, New Zealand has not done this well.
29. We have seen what happened in Wellington recently and the unacceptable behaviour by some of the protesters as the disturbing outcome of a divided society. But what does the average New Zealander think about the "no jab, no job" policy?

### **Public view:**

30. A recent nationwide poll found 61% (almost 2 in 3) support unvaccinated employees being able to keep their jobs if they agreed to have a regular rapid antigen Covid-19 test – up from 58% on a similar poll in November. 23% were opposed – down 4%. <sup>18</sup>
31. Only 39% support an employer being able to sack an unvaccinated staff member, down from 50% in the November 2021 poll by Curia <sup>19</sup>. Opposition has increased from 31% to 38%. A further 23% were unsure / refused to say.

### **Summary:**

32. We submit that the New Zealand Government has breached the Bill of Rights 1990 and international human rights, against the advice of the World Health Organisation and the United Nations. This has been found to be the case with the NZDF and NZ Police mandates. Although the justification might be argued to be different, what the mandates have caused is undoubtedly the same breach.
33. These breaches are not justified due to the current expert advice on the spread of Omicron and the more effective method of regular rapid antigen testing (RATs) – which is now ironically the primary mode of testing in New Zealand, despite the Government refusing to accept them as an alternative until only recently. The science hasn't changed. Only the political attitude.

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<sup>16</sup> <https://www.who.int/publications/m/item/covid-19-virtual-press-conference-transcript---7-december-2020>

<sup>17</sup> [www.dailywire.com/news/vaccination-should-be-by-choice-and-not-by-force-human-rights-groups-condemn-covid-19-restrictions](http://www.dailywire.com/news/vaccination-should-be-by-choice-and-not-by-force-human-rights-groups-condemn-covid-19-restrictions)

<sup>18</sup> <http://familyfirst.org.nz/wp-content/uploads/2022/02/Vaccine-Poll-Results-February-2022.pdf>

<sup>19</sup> <http://familyfirst.org.nz/wp-content/uploads/2021/11/Vaccine-Poll-Results-Nov-2021.pdf>

34. From recent polls taken, New Zealanders would prefer regular testing over the loss of a job and a divided New Zealand.
35. It also appears reasonable to argue that both the unvaccinated and the vaccinated should be regularly tested to ensure maximum workplace safety.
36. The harm to families and the division of society is not justified by the miniscule change in the spread of Omicron through the small minority of unvaccinated New Zealanders.
37. It's time to get NZ working together again.
38. We wish to appear before the committee.

A handwritten signature in black ink, appearing to read 'Bob McCoskrie', written in a cursive style.

**Bob McCoskrie JP**  
**Petitioner on behalf of 87,269 signatories**