

OPEN PUBLIC LETTER

“The New Zealand Bill of Rights Act 1990 is not mentioned at all in the New Zealand Police Code of Conduct and is referred to only once in the Public Sector Code of Conduct.”

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From:

Justice Watch New Zealand Inc.

Date:

5 April 2026

To:

The Honourable Judith Collins KC
Attorney-General of New Zealand

Subject:

Alignment of State Conduct Frameworks with the New Zealand Bill of Rights Act 1990

Dear Attorney-General,

This letter constitutes an open public and formal constitutional representation concerning the alignment of State conduct frameworks, including the Public Sector Code of Conduct and the New Zealand Police Code of Conduct, with the New Zealand Bill of Rights Act 1990 (NZBORA).

1. Introduction and Central Issue

There are approximately 63,000 individuals employed across the New Zealand public service, alongside other State bodies exercising public authority, including the New Zealand Police.

Each exercises State power in respect of individuals whose rights are affirmed under NZBORA.

NZBORA applies to all acts done by persons or bodies performing public functions. It is therefore the binding legal framework governing the exercise of State power.

The central issue is this:

The New Zealand Bill of Rights Act 1990 — the controlling legal framework governing the exercise of State power — is not mentioned at all in the New Zealand Police Code of Conduct, and is referred to only once in the Public Sector Code of Conduct, in a manner that does not articulate its role as the governing legal constraint on the exercise of public power.

2. Constitutional Framework

State conduct operates within a clear constitutional hierarchy:

- NZBORA as the controlling legal constraint
- Enabling legislation, including the Public Service Act 2020
- Internal codes and policies

NZBORA is not guidance.

It is binding law that governs and constrains the exercise of all public power.

All subordinate instruments must align with it.

This position is reinforced by the common law, including proceedings before the Supreme Court such as *Daniel Clinton Fitzgerald v Attorney-General*, which affirm that the exercise of public power must be demonstrably consistent with the rights affirmed under NZBORA.

Such authorities form part of the legal framework within which State power must be exercised. Their absence from conduct frameworks further illustrates the lack of clear and consistent alignment with NZBORA.

3. Public Sector Code of Conduct

The Public Sector Code:

- Makes only limited reference to NZBORA

- Does not explain the obligations arising from it
- Does not anchor conduct to rights-based legal standards

This creates a structural risk:

Conduct may comply with the Code yet fail to meet the legal requirements imposed by NZBORA.

4. New Zealand Police Code of Conduct

A review of the New Zealand Police Code of Conduct reveals the same issue in more acute form.

The Police Code:

- Contains no reference to NZBORA
- Relies on values, ethics, and general lawfulness
- Uses internal decision tools such as the SELF CHECK framework

Police exercise statutory powers including:

- Search and seizure
- Detention
- Use of force

The exercise of these powers directly engages the rights of individuals affirmed under NZBORA, including:

- Freedom of movement
- Freedom of expression
- Protection against unreasonable search
- Protection against arbitrary detention

NZBORA does more than impose limits on the exercise of those powers.

It provides the legal framework within which those powers must be understood and exercised.

It requires that individuals be treated as rights-bearing persons, and that decisions affecting them be made consistently with those rights.

In the absence of any reference to NZBORA in the Code of Conduct, there is a real risk that this framework is not properly conveyed.

In those circumstances, the guidance provided to Police is incomplete, and the exercise of power may proceed without clear and consistent reference to the rights of the individual.

5. Structural Omission Identified

Taken together:

- Public Sector Code — minimal reference to NZBORA
- Police Code — no reference to NZBORA

This reveals a systemic structural omission in the integration of NZBORA across conduct frameworks governing the exercise of State power.

6. Practical Consequence

Where NZBORA is not embedded:

- Decision-making is guided by internal standards
- Legal constraints are not explicitly applied
- Conduct may appear acceptable within the system

Yet fail when assessed against the rights of the individual.

7. Search and Seizure Standards

Ordinarily, statutory powers are constrained by:

- Reasonable grounds to suspect
- Reasonable grounds to believe

These standards:

- Prevent arbitrariness
- Protect innocent persons
- Ensure proportionality

They reflect long-established legal safeguards aligned with NZBORA.

8. Suspicionless Powers and Individual Rights

A practical illustration of this issue arises in the context of recent legislative provisions enabling roadside drug testing.

Under this regime, Police are empowered to require individuals to undergo drug testing without any requirement for reasonable grounds to suspect impairment, and on the basis of selection by the officer.

In effect, the exercise of this power proceeds on the basis of arbitrary choice as to who is stopped and tested.

While such powers may be authorised under statute, their nature and operation raise immediate and fundamental questions of consistency with NZBORA, including:

- Freedom of movement
- Protection against unreasonable search
- The requirement that any limitation on rights be demonstrably justified in a free and democratic society

The absence of any objective threshold — such as reasonable suspicion — removes a core safeguard against arbitrariness.

In those circumstances, the selection of individuals for testing is not anchored to observable conduct, risk, or evidential basis, but instead depends on individual choice.

To the extent that one individual — the police officer — is able to exercise coercive State power over another individual — the private citizen — on the basis of that officer's own choice, without the need for any objective justification beyond personal preference or the fulfilment of policy-driven testing targets, the question of arbitrariness arises in its clearest form.

That raises a critical question:

How can the exercise of a power based on arbitrary choice be consistently applied in a manner that is lawful, reasonable, proportionate, and demonstrably justified under NZBORA and the common law?

Where suspicionless powers are exercised:

- Justification must be clear, specific, and proportionate to the individual case
- In the absence of any objective basis for selection, justification becomes inherently difficult

Where such powers are exercised repeatedly across the population, the cumulative effect further intensifies the concern, as the proportionality of repeated intrusions on individual rights becomes increasingly difficult to sustain.

- NZBORA rights are held individually.
- Justification must be assessed at that level.

9. Matters for Consideration

Whether current Codes:

- Adequately give effect to NZBORA obligations
- Risk permitting conduct inconsistent with NZBORA
- Require amendment to ensure proper constitutional alignment

10. Conclusion

This issue goes to the heart of the Rule of Law.

The absence of NZBORA from these conduct frameworks raises a fundamental constitutional question:

Do the current arrangements ensure that the exercise of State power is consistently governed by, and demonstrably aligned with, the rights affirmed under the New Zealand Bill of Rights Act 1990?

Yours faithfully,

Andrew Major

Andrew Major
Chairman & Lead Investigator
Justice Watch New Zealand Inc.

CC:

The Rt Hon Prime Minister of New Zealand
The Hon Minister of Justice
The Hon Minister for the Public Service
The Hon Minister of Police
Cabinet Ministers
The Public Service Commissioner
New Zealand Law Commission
Legislation Design and Advisory Committee
Human Rights Commission (New Zealand)
Office of the Ombudsman (New Zealand)

Sir Geoffrey Palmer

SCHEMATIC 1 – CORE CONSTITUTIONAL STRUCTURE

NEW ZEALAND BILL OF RIGHTS ACT 1990 (NZBORA)

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(Binding Legal Constraint)

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STATE POWER (All Public Functions)

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Decision-Making by Officials

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Assessment Against Rights

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Protection of Individual Rights

SCHEMATIC 2 – CURRENT STRUCTURAL PROBLEM

CODES OF CONDUCT

(Public Sector + Police)

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Values / Ethics / Internal Guidance

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Decision-Making

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Exercise of State Power

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NZBORA NOT EXPLICITLY EMBEDDED

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RISK:

Decisions made without clear rights-based framework



Impact on Individual Rights