

New Zealand Law and Conscientious Objection

As military service is voluntary in New Zealand, conscientious objection is considered less likely to arise as an issue. If it were to arise, there are legal protections available to a conscientious objector under New Zealand law.

Paragraph 1 of the United Nations Human Rights Council Resolution 20/2 on "Conscientious objection to military service" ("the resolution") requests that states submit any relevant information regarding domestic law on conscientious objectors to the High Commissioner for Human Rights.

While compulsory military service was in force in New Zealand in the past, exemptions from conscription were possible for those objecting on religious grounds under sections 28-36 of the Military Training Act 1949. Compulsory service was abolished by section 16 of the Volunteers Employment Protection Act 1973, and any specific statutory reference to conscientious objection to military service vanished along with compulsory service.

The end of conscription however does not mean that conscientious objection issues are no longer relevant to voluntary forces. A 2012 United Nations Publication entitled "Conscientious Objection to Military Service" (HR/PUB/12/1) identifies a number of states which recognise that military personnel who have volunteered for service may become conscientious objectors during their service, namely Germany, the Netherlands and the United Kingdom. The report goes on to state at p 55 that "[t]his recognition is based on the right to change one's religion or belief, and the fact that an individual's deeply held convictions can evolve and change over time." There remains a possibility for conscientious objection to arise in respect of voluntary forces such as New Zealand's.

NZ Legal Framework

Under current New Zealand law, there are no statutes which explicitly govern conscientious objection, and there is no case law on the topic.

However, section 13 of the New Zealand Bill of Rights Act 1990 (BORA) provides a "right to freedom of thought, conscience, religion, and belief, including the right to adopt and hold opinions without interference." It is noted that BORA rights have been held to be subject to different limitations in a military context, such that an unreasonable intrusion into rights in a civilian context may not be unreasonable in the context of service: *R v Jack* [1999] 1 NZCMAR 324.

A substantially similar right to freedom of thought, conscience and religion is found in both the Universal Declaration of Human Rights (UDHR) at art 18, and in the International Covenant on Civil and Political Rights (ICCPR), also at art 18. New Zealand ratified the UDHR in 1948 and the ICCPR in 1978, and no relevant reservations were entered to either instrument. Together, they create an international legal overlay to New Zealand's domestic legislation governing the conscientious objector issue.

While not directly referenced in the UDHR or ICCPR, subsequent interpretation has derived a right to conscientious objection from these instruments. The Human Rights Committee, in its general comment No. 22 (1993), interpreted the art 18 right to

freedom of conscience under the ICCPR as giving rise to a derivative right of conscientious objection. The decision by the Committee in *Yoon et al v Republic of Korea* (2006) held that the derivative right to conscientious objection under art 18 implies an obligation on all state parties to the ICCPR. "