

Ref: 206947

Wednesday, 31 March 2021

Amy S Van Wey Lovatt
By email to fyi-request-14883-c34b5c7f@requests.fyi.org.nz

Tēnā koe Amy,

Response to your request for Official Information

On 9 March 2021, you requested from the Human Rights Commission (“the Commission”) the following information:

- information on the Commission’s position on what complaints we can receive under the Human Rights Act, specifically in relation to the New Zealand Bill of Rights Act?
- information the Commission holds on what if any agencies can consider breaches under the New Zealand Bill of Rights Act?

Complaints under the Human Rights Act and the Bill of Rights Act

Under Part 3 of the Human Rights Act 1993 (HRA), the Commission may “facilitate the resolution of disputes about compliance with Part 1A or Part 2”¹

Part 1A of the HRA applies exclusively to government entities and bodies performing public functions. It provides that any act or omission that is inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990 (BORA), is a breach of Part 1A of the HRA.

In this respect Part 1A is linked to the BORA, which only applies to actions of the branches of Government or persons or bodies who perform public functions prescribed by law.

Part 2 of the HRA includes the grounds of discrimination (section 21) and sets out the areas of public life, such as employment or access to services for example, that private entities and individuals must comply with.

In summary, the only BORA complaints which the Commission can take action on are those while allege discrimination under s19 of the BORA. Beyond s19, the

¹ Section 76(1)(a) Human Rights Act 1993.

Commission has no powers to take action under Part 3 in respect of complaints regarding breaches of other rights protected under the BORA.

Please see the Commission's website for further information.²

Bodies that can consider breaches of the New Zealand Bill of Rights Act

The most appropriate body to consider breaches of the BORA is the New Zealand judiciary. Claims alleging breaches and seeking remedies under the Bill of Rights Act will be heard by the High Court (in the first instance), with appeals to the Court of Appeal and Supreme Court, if granted by the relevant Court.

A complainant whose discrimination complaint under Part 1A of the HRA/s 19 of BORA is unable to be dealt with or resolved by the Commission may take their complaint to the Human Rights Review Tribunal (HRRT). The HRRT will then hear and determine the complaint and order remedies if they find a breach has occurred.³

A person may also complain to the Ombudsman's Office if they believe that a public body has treated them unfairly or unlawfully. The Ombudsman has powers to investigate, make findings and issue recommendations. The Ombudsman does not have the power to order remedies.

Alternative avenues

If you are unhappy with this response, under the Official Information Act you are entitled to complain to the Ombudsman's Office. Information about how to make a complaint is available at www.ombudsman.parliament.nz or on freephone 0800 802 602.

If you have any further queries about this response, please feel free to contact me directly.

Nāku noa, nā



Jaimee Paenga
Legal Adviser

² <https://www.hrc.co.nz/enquiries-and-complaints/what-you-can-complain-about/>

³ For more information on the HRRT see - <https://www.justice.govt.nz/tribunals/human-rights/>