

New Zealand Bill of Rights (Private Property Rights) Amendment Bill

Member's Bill 2005 No 255-1

Explanatory Note

The purpose of this Bill is to provide for the protection of private property rights in New Zealand. No specific protection of such rights is currently included in the New Zealand Bill of Rights Act 1990. That is in contrast to the constitutional protection accorded to such rights in many overseas jurisdictions.

Life, liberty, and property have always been at the heart of the system of liberal values. From as far back as the Magna Carta, there has been an understanding that private property deserves and requires protection. Such protection has since become part of the common law tradition. This protection extends to Maori under the Treaty of Waitangi, which imparted to Maori all the rights and privileges of British subjects, and to all other people of New Zealand regardless of their race or ethnic background.

As time passes, it becomes more evident that private property rights are an omission from the New Zealand Bill of Rights Act. They are among the fundamental rights. The protection of private property is being recognised increasingly as a precondition to the enjoyment of many other rights and as an indispensable basis for economic prosperity and social well-being. This Bill takes its lead from Article 17 of the Universal Declaration of Human Rights proclaimed in 1948, which provides that everyone has the right to own property alone as well as in association with others and prohibits the arbitrary deprivation of property. That prohibition requires that no-one's property is to be confiscated without compensation.

Clause 4 inserts two new sections 11A and 11B on private property rights into the New Zealand Bill of Rights Act. The new provisions establish the right to own property and the right to compensation in the event of deprivation of property.

Gordon Copeland

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The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the New Zealand Bill of Rights (Private Property Rights) Amendment Act 2005.

(2) In this Act, the New Zealand Bill of Rights Act 1990 1990 No 109 is called "the principal Act".

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to amend the principal Act to provide a right to own property and the right to compensation in the event of deprivation of property.

4 New heading and sections 11A and 11B inserted

The principal Act is amended by inserting, after section 11, the following heading and sections:

"Private property rights

"11A Right to own property

Everyone has the right to own property, whether alone or in association with others.

"11B Right not to be arbitrarily deprived of property

No person is to be deprived of the use or enjoyment of that person's property without just compensation."