

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA21/2020  
[2022] NZCA 24

BETWEEN	MARK DAVID CHISNALL Appellant/Cross-Respondent
AND	THE ATTORNEY-GENERAL First Respondent/Cross-Appellant
AND	THE CHIEF EXECUTIVE, ARA POUTAMA AOTEAROA DEPARTMENT OF CORRECTIONS Second Respondent

Hearing: 2 and 3 February 2021  
(further submissions received 21 December 2021)

Court: Cooper, Brown, Clifford, Gilbert and Collins JJ

Counsel: A J Ellis, B J R Keith and G K Edgeler for Appellant  
D J Perkins and M J McKillop for First Respondent  
No appearance for Second Respondent

Judgment: 22 February 2022 at 2.15 pm

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**JUDGMENT OF THE COURT**

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**We make declarations that:**

**A Part 1A of the Parole Act 2002 is inconsistent with s 26(2) of the New Zealand Bill of Rights Act 1990, and that inconsistency has not been justified under s 5 of that Act.**

**B The Public Safety (Public Protection Orders) Act 2014 is inconsistent with s 26(2) of the New Zealand Bill of Rights Act 1990, and that inconsistency has not been justified under s 5 of that Act.**

## REASONS OF THE COURT

(Given by Cooper J)

[1] In our judgment of 22 November 2021 we expressed our conclusion that it was appropriate for the Court to make declarations of inconsistency.<sup>1</sup>

[2] In accordance with [231] of our judgment we received a joint memorandum of counsel, but the memorandum did not record an agreed position as to the form of declarations to be made.

[3] Having considered the memorandum of counsel, we consider that the declarations that will best reflect the terms of the judgment are declarations that:

- (a) Part 1A of the Parole Act 2002 is inconsistent with s 26(2) of the New Zealand Bill of Rights Act 1990, and that inconsistency has not been justified under s 5 of that Act.
- (b) The Public Safety (Public Protection Orders) Act 2014 is inconsistent with s 26(2) of the New Zealand Bill of Rights Act 1990, and that inconsistency has not been justified under s 5 of that Act.

[4] We make declarations accordingly.

Solicitors:  
F J Handy, Wellington for Appellant  
Crown Law Office, Wellington for First Respondent

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<sup>1</sup> *Chisnall v The Attorney-General* [2021] NZCA 616 at [230].