(NZHC, 2022b)
[27 Apr 2022]

THE HIGH COURT OF NEW ZEALAND
TE KŌTI MATUA O AOTEAROA

27 April 2022

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

GROUNDED KIWIS GROUP INCORPORATED v MINISTER OF HEALTH
[2022] NZHC 832

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

[1] In response to the COVID-19 pandemic, restrictions were placed on overseas New Zealanders' right to return to their country. These restrictions required all people arriving by air, including New Zealand citizens, to enter Government-managed isolation and quarantine facilities (MIQFs) for a prescribed period and to submit to medical testing as part of the Government's elimination strategy.

[2] Grounded Kiwis, a body established to advocate for New Zealanders seeking to enter New Zealand impacted by the restrictions, challenged the restrictions as an unjustified limit on the right to enter New Zealand affirmed in the New Zealand Bill of Rights Act 1990. Its challenged focussed on aspects of those restrictions in the period between 1 September 2021 to 17 December 2021 (the Relevant Period). These concerned: the requirement to have a voucher for a MIQF before entry and to stay in a MIQF for 14 days and then 7 days; the basis for approving groups to enter MIQF and how that operated in practice; the way a voucher in MIQF was obtained through an online lobby system; and how a category of emergency applications were determined.

[3] The High Court found that the MIQ system did not sufficiently allow individual circumstances to be considered and prioritised where necessary. Because of this it was inevitable it would operate unjustly in individual cases when demand for places significantly exceeded supply, as it did during the Relevant Period for much of the time before that. The MIQ system did not sufficiently allow for individual circumstances because most of the vouchers for MIQ were available through a "virtual lobby" that operated like a lottery. This was not a mechanism that could appropriately give effect to the right of citizens to enter. The emergency allocation process was intended to ameliorate this but the categories were too tightly set, narrowly interpreted in some cases, and there were limited places available in MIQFs for people who met the criteria. A more sophisticated system, that better prioritised those whose right to return were being unreasonably impacted, was reasonably available and would have met the Government's public health strategy.

[4] Grounded Kiwis' challenge therefore succeeds.

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