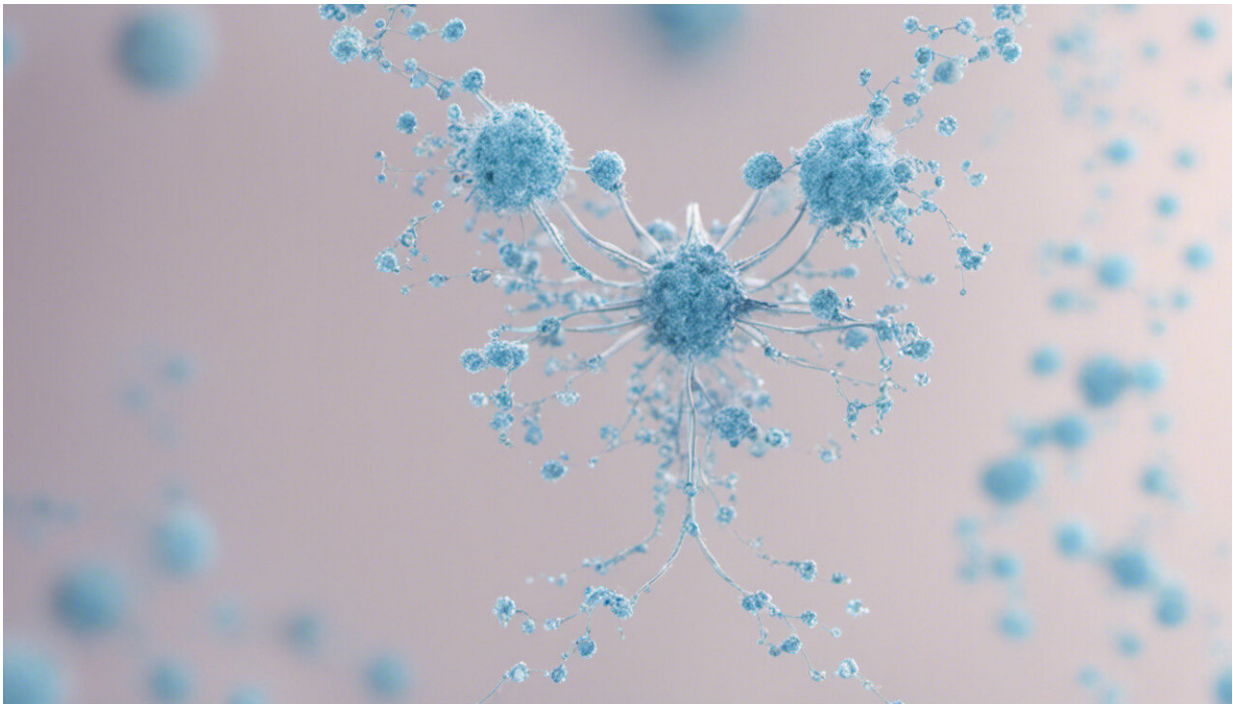


Should a COVID-19 vaccine be compulsory? And what would this mean for anti-vaxxers?

August 6 2020, by Claire Breen



Credit: AI-generated image ([disclaimer](#))

With COVID-19 vaccine developers reporting [promising results](#), it is probable we will one day face a major public health question: can the government compel New Zealanders to be vaccinated?

Just as inevitably, some people will refuse a vaccine. As we have seen

overseas with debates over the wearing of masks, and more generally with [anti-vaccination activists](#) everywhere, compulsion is not a simple matter.

There are competing rights and duties on both sides. Forcing an individual to be vaccinated is a violation of their fundamental right to personal autonomy, which informs the more specific right to bodily integrity.

Basically, those rights mean every person can make decisions for themselves and what can and cannot be done to their bodies.

The state's duty to protect

While international human rights treaties support this, they do not specifically talk about the right to refuse medical treatment. Rather, they state that everyone has the right not to be subjected to medical experimentation [without free consent](#).

And here we see how quickly the stakes are raised. These rights are part of the broader right to be free from torture, cruel and inhuman degrading treatment or punishment. The specific reference to medical experimentation is a response to what happened under the Nazi regime during the second world war.

But it's the fundamental [right to life](#) that throws the COVID-19 vaccine issue into stark relief, because it also means governments must make some effort to safeguard citizens' lives by protecting them from [life-threatening](#) diseases.

Although everyone has the right to the highest attainable standard of [health](#), this includes the right to be free from [non-consensual medical treatment](#). But this in turn may be subject to the state's obligation to

[prevent and control disease](#).

The right to be free from non-consensual treatment can only be restricted under [specific](#) conditions that respect [best practice and international standards](#).

The introduction of mass [immunisation programs](#) therefore requires quite a balancing act.

In New Zealand, the courts and their English predecessors have long recognised and protected the right to bodily integrity. The New Zealand Bill of Rights Act 1990 also clearly [states](#) that everyone has the right to refuse medical treatment.

Public health can trump individual rights

Any restriction of that right, any intrusion into the individual's bodily integrity, would require explicit statutory authorisation. Such legislation would have to be interpreted very strictly and, wherever possible, consistently with the Bill of Rights Act.

There are examples of how this would work in practice. A [recent decision](#) from the Supreme Court of New Zealand addressed whether the fluoridation of water as a [public health measure](#) was a violation of the right to refuse medical treatment.

The court found it was. But—and it's an important but—the court decided some public [health](#) measures could override the right to refuse medical treatment where these measures are [clearly justified](#).

Clear justification would mean there must be a reasonable objective to compulsory vaccination that justifies the limits placed on the right to refuse [medical treatment](#).

Such limits must be no more than are reasonably necessary to achieve the desired public health outcome, and they must be proportionate to the importance of mandatory vaccination.

Consequences for refusing vaccination?

In the end, should a COVID-19 vaccine become available, New Zealanders would have the right (but not the absolute right) under international and domestic law to refuse to be vaccinated. And the government could—and might even be obliged to—override that right.

So, no definitive answer. Furthermore, just because the government could make vaccination compulsory doesn't mean it should.

It might not even have to. A person could still exercise their right to refuse vaccination but the government could then impose limits on other rights and freedoms.

In practical terms, this could mean no travel or access to school or the workplace if it placed the health and lives of others at risk. Similarly, a refusal to be vaccinated could limit jobs or social welfare benefits that depend on work availability.

But, again, the government would have to present clear justifications for any such restrictions.

Public consent is vital

Without a doubt, this would be highly controversial and the [government](#) would need to engage in another balancing act.

But a purely voluntary approach can have mixed results, too, as the 2019

measles outbreak showed. The main problem appears to have been a [poorly designed](#) immunisation program that missed various ethnic, socioeconomic and regional targets.

The success of a voluntary approach will be dependent on a highly performing vaccination program that is accessible to all New Zealanders and backed up by a strong public education campaign.

Ultimately, as the collective effort of the "team of 5 million" has already shown, the effectiveness of any law really depends on each one of us and the decisions we make.

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