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CRITIQUING THE END OF LIFE CHOICE ACT 2019

Jeanne Snelling

The End of Life Choice Act 2019, undoubtedly one of the most significant health laws to be passed in New Zealand in recent decades, is the culmination of years of lobbying to permit terminally ill adults to request and receive medical assistance to end their lives. While assisted dying is now a core part of New Zealand's medico-legal landscape, its legislative path was neither smooth nor straight forward. This article considers significant events leading to its introduction as a members' bill, before distilling the resulting Act's underlying principles and outlining its main provisions. This analysis highlights inherent tensions in the Act, as well as uncertainties in the scope of the eligibility provisions that are likely to pose challenges for providers and individuals who may wish to access assisted dying. Informed by the Act's legislative history, it considers how these tensions and uncertainties might be managed in law, policy and practice.

LAWFUL ACT DURESS: UNCERTAINTY AFTER THE QUEST FOR CERTAINTY

David McLauchlan

This article discusses the important recent decision of the United Kingdom Supreme Court in Times Travel (UK) Ltd v Pakistan International Airline Corporation *in which their Lordships unanimously affirmed the concept of lawful act duress but disagreed as to the requirements to be satisfied for such a claim to be established. Two main arguments are made. First, although the judgments delivered by Lord Hodge and Lord Burrows stressed the need for clarity and certainty in this area of the law, neither has achieved it. Second, nevertheless Lord Burrows' view, despite an apparent ambiguity, is to be preferred.*

CAUGHT IN THE (BUILDING) ACT? HOW THE HEALTH AND SAFETY AT WORK ACT 2015 EXPOSES THE LIMITS OF SEISMIC RESILIENCE FOR EXISTING BUILDINGS IN AOTEAROA NEW ZEALAND

Toni Collins and Nadia Dabee

In Aotearoa New Zealand, we live with the knowledge that a large and devastating earthquake could occur at any time, without warning. When it strikes, we need to know we will be safe in the buildings where we work. This article explores the legal obligations of business owners to be aware of, and understand, the seismic vulnerability of their buildings by examining the Health and Safety at Work Act 2015 and the Building Act 2004, and the standards set by both for building safety in an earthquake. Confusingly, there is a different standard to meet under each Act. WorkSafe's resolution of these two standards appears to favour the lower standard in the Building Act 2004 while simultaneously requiring action to meet the higher standard in the Health and Safety at Work Act 2015. It is argued that the higher standard under the Health and Safety at Work Act 2015 is the correct standard to be applied. This interpretation ensures the purpose of the Health and Safety at Work Act 2015 is achieved and workers and building occupants are afforded the highest level of protection under the law in relation to the safety of their buildings.

PANDEMIC LITIGATION REAFFIRMS *HANSEN* APPROACH BUT ALSO EXPOSES TWO FLAWS IN ITS FORMULATION

Hanna Wilberg

Pandemic-related litigation has brought a sudden increase in judicial review applications raising issues about the approach to ss 5 and 6 of the New Zealand Bill of Rights Act 1990. Some of these cases have exposed two difficulties with the Hansen *six-step approach. The purpose of that approach is to ensure that the s 6 interpretive direction is used to avoid only those limits on rights that cannot be justified in terms of s 5. For the approach to achieve that purpose in all different types of cases, two difficulties with that test need to be ironed out.*

The first difficulty concerns step one, ascertaining the "intended" meaning. The approach adopted in some recent appellate decisions is to engage in a full statutory interpretation exercise at that point. This has the potential to undermine the respect for justified limits. An alternative approach risks obstructing the s 6 direction to prefer a rights-consistent meaning (one that avoids authorising unjustified limits). I will argue a better approach is to treat step one as a mere threshold enquiry.

A second difficulty concerns the formulation of all steps of the Hansen *approach as addressed to "meanings" of the empowering legislation. I suggest this is part of the reason why some courts have taken the view that the* Hansen *approach is not appropriate when dealing with broad statutory powers. A better approach, I will argue, is to address steps two to four to the act, decision or rule that is the subject of challenge.*

THE LIMITS OF SETTLEMENT PRIVILEGE IN NEW ZEALAND: DISTILLING THE GUIDING PRINCIPLES

James Anson-Holland

When are communications for mediation or settlement negotiations not protected from disclosure? The protection of legal privilege over such communications helps to facilitate and encourage mediation and settlement negotiations. However, there are limits to this protection and in some circumstances, it is possible for mediation or settlement communications to be disclosed. Recent court decisions have considered these issues, including changes to the Evidence Act 2006. They emphasise that while this protection remains on strong ground, there are good reasons to make exceptions in some limited circumstances. This article explores those limited circumstances.

THE CONSTITUTION OF NEW ZEALAND: A CONTEXTUAL ANALYSIS: MATTHEW SR PALMER AND DEAN R KNIGHT

Edward Willis

Matthew Palmer and Dean Knight's new book, The Constitution of New Zealand: A Contextual Analysis*, makes its principal aim clear on its first page: to provide a "realist" account of New Zealand's "anachronistic" yet "rich" and "charming" constitution. The focus is explicitly on understanding and contextualising the performance of constitutional life, not the dry study of constitutional text. This approach seeks to set the book apart from other recent texts on New Zealand constitutional law, but it also makes plain the authors' intellectual orientation. The first section of this review provides an overview of what is an accessible and thoughtful contribution to New Zealand constitutional scholarship. The second section considers what a "constitutional realism" account actually is and what, if anything, that perspective adds to our thinking about New Zealand constitutional law.*