
Book review

ELDER LAW IN NEW ZEALAND

Elder Law in New Zealand by Kate Diesfeld and Ian McIntosh (eds) (Thomson Reuters, Wellington, 2014) ISBN: 9780864728913; pages 633; price NZ\$120 (pb).

Elder Law has arrived in New Zealand and Australia as an important area of practice, scholarship and study. In 2015, the University of Western Sydney will publish the eighth volume of the *Elder Law Review*. The Law Society of New South Wales hosts an Elder Law and Succession Committee, while the Law Institute of Victoria hosts an Elder Law Section. The Queensland Law Society generates professional development sessions on Elder Law. Professor Peter McDermott teaches a course on Elder Law for the University of Queensland and the second edition of Rodney Lewis' *Elder Law in Australia* (LexisNexis, Sydney) was published in 2011.

However, contemporary and high-quality texts on Elder Law outside the United States, where Lawrence Frolik's *Elder Law: Cases and Materials* (LexisNexis, New York, 2011) has entered its fifth edition, are rare. For this reason, Diesfeld and McIntosh's New Zealand text is to be welcomed. Kate Diesfeld is a Professor of Health Law at Auckland University of Technology, while Ian McIntosh is the Manager of Product Development at Thomson Reuters in New Zealand.

Elder Law in New Zealand deals with a wide variety of subjects. It consists of 23 separate chapters, divided into nine parts: Relevance and Context; Setting the Context of Ageing in New Zealand; Decision-making; Health Care and Rights; Health Services, Pensions and Benefits, and Accident Compensation; Residential Issues; Retirement, Wills and Estates; Elder Abuse; and Emerging Issues in Elder Law. Simply to identify such a panoply of topics speaks to the breadth and practicality of the work. Each chapter is written by an expert on its area. The book is cross-disciplinary, commencing, for instance, with a chapter by the social anthropologist, Sally Keeling.

Diesfeld (Ch 2) makes the point that the elderly can be both under-served by lawyers and can be victims of a range of forms of discrimination and abuse which too rarely come to the attention of those in a position to address them effectively. She argues for the need for greater recognition of the area of Elder Law and for involvement of activists to protect older persons' human rights. Parsons, Parsons and Jacobs (Ch 3) provide useful demographics about the evolving state of ageing and its economic impact in New Zealand. They call for funding to be prioritised for community-based services over those of residential care. Boyd, Perkins and Perkins (Ch 4) identify a range of health trends, most notably dementia and chronic illness resulting from the obesity epidemic and cardiovascular disease, which will challenge health services in the years to come.

Bell and Brookbanks (Ch 5) explore a range of difficult issues that emerge from impairment from the effects of age and disease in decision-making capacity. They argue that decision-making about persons whose capacity is compromised must be made in a way that respects their rights and infringes their liberties as little as possible. Gavaghan and Hedley (Ch 6) explore legal issues likely to be encountered by elders, including matters relating to assisting suicide and euthanasia. They observe that questions around competence to decline life-prolonging interventions persist and are particularly confronting in relation to patients whose decision-making capacity may fluctuate. Gledhill's contribution (Ch 7) on rights of older people to access health care is a strong chapter. It grapples with issues in an international context, explores difficult issues relating to discrimination, and observes the absence of a specific Convention for Older Persons. Related themes are explored by Bell and McGregor (Ch 8) who deal with human rights law and older people. They comment that the law has inherent limitations as an instrument of social change and as a defender of human rights in contexts such as those related to age-related discrimination.

A series of chapters deals respectively with health services for older people (Duggal, Ch 9), entitlements to pensions and benefits (McIntosh, Ch 10; St John and Dale, Ch 11) and accident compensation entitlements (Tennent, Ch 12). Each contains useful and up-to-date information. McGregor (Ch 13) identifies emerging issues in the human rights of older people and those who care



for them. She observes that internationally there is a shortage of aged care workers and that too often female carers are poorly paid and supported. Burke (Ch 14) sets out the law and practice relating to retirement villages and rest homes, a fraught and crucial issue in respect of people's circumstances when their independence commences to deteriorate. Mudford (Ch 15) deals with dispute resolution in retirement villages, a difficult and sensitive issue for relatives of older people who often fear the repercussions of their expressing concern or aggrievement about the quality of care provided to their loved ones.

A series of chapters deals with property and succession issues. Briggs (Ch 16) writes about relationship property issues for the elderly, Peart (Ch 17) about trust issues for separating elderly spouses or partners, and Patterson (Ch 18) about trust administration. Peart (Ch 19) analyses testamentary issues, including dying with and without a will. She comments that the uncertainty generated by the various statutory claims that can be made after a person's death makes the fair distribution of assets complex and challenging.

Baker (Ch 20) explores the increasingly controversial area of elder abuse, neglect and exploitation. The position that he takes is that protection is key to providing safeguards for older people and that the Consumer Code, together with criminal and civil remedies, have the potential to provide effective prevention, deterrence and punishment for these forms of conduct. Collins (Ch 21) sets out strategies employed by Age Concern's Elder Abuse and Neglect Prevention Services, observing that there had been reports in the five years to 2014 of a very substantial decline in clients' health as a result of abuse, with many victims being moved into residential care as a result.

Veitch and Brandford (Ch 22) explore legal issues faced by older people with intellectual disability, while Henaghan (Ch 23) provides a fascinating contribution on the rights of grandparents. He observes that in times of family crisis, grandparents often step into the parental role but that this can be far from easy and that many grandparents struggle physically, emotionally and financially, as well as that their status is attended by much uncertainty. He argues that provision of formal status when grandparents play such a role may bring a welcome sense of security to many, as well as a suitable recognition of their valuable contributions to children's wellbeing.

This brief sketch of the chapters in Diesfeld and McIntosh's book communicates the breadth of the issues that are addressed. All too often these issues, including those which arise from human rights, are the subject of inadequate awareness amongst lawyers, as well as amongst those who provide necessary services. *Elder Law in New Zealand* is well organised and researched and it is accessibly written. Its index is sound. The authors and editors have provided a valuable service in exploring the array of challenges to addressing the rights and needs of older people from diverse, contemporary and interdisciplinary perspectives. The aspiration of Diesfeld is stated to be to "foster a collegial environment for kindred practitioners and scholars to advocate on behalf of older people" and to "foster alliances, and perhaps a specialist branch of unified lawyers, as New Zealand prepares for its ageing population" (p 29). Diesfeld and McIntosh's *Elder Law in New Zealand* is an important contribution to international literature on its topic. It is likely to be regarded as having achieved both its consciousness-raising ambition and to having made a constructive contribution to bringing together diverse professionals whose wish is to enhance the quality of life of the older members of our community.

Ian Freckelton QC