

BOOK REVIEWS

Health Law in New Zealand

(General Editors **Peter Skegg** and **Ron Paterson**,
Thomson Reuters, Wellington, 2015)

Health Law in New Zealand presents an authoritative and considered account of the law as it applies to the health sector in New Zealand. It both updates, and builds upon, its award-winning predecessor *Medical Law in New Zealand*. This volume outlines, and elucidates in context, a wide range of subject matter relating to both healthcare law and public health law in New Zealand.

The text is divided into ten sections – introduction, standards of care, consent, health information, mental health and intellectual disability, the beginning of life, the end of life, human tissue and coroners, public health, and complaints, investigations and compensation. Each section includes multiple chapters. Audiences to whom this volume may appeal include practitioners and students of legal and health professions, ethicists, patient advocates, and those working in health administration and policy.

The two general editors – Peter Skegg (Emeritus Professor of Law at the University of Otago) and Ron Paterson (Professor of Law at Auckland University and former Health and Disability Commissioner (HDC)) – are New Zealand’s most eminent scholars of health law. Their deep knowledge and experience are complemented by chapters from other leading academics including Joanna Manning, John Dawson, and Nicola Peart, all contributors to the previous text. New contributors Louise Delany (Senior Lecturer in Public Health at the University of Otago and former Ministry of Health lawyer) and Morag McDowell (Coroner and former Director of Proceedings for HDC) bring a welcome frontline perspective to the new chapters on public health and coroners.

For those familiar with its predecessor *Medical Law in New Zealand*, this new incarnation presents updated content that reflects legislative change, fresh case law and updated analysis. But more than that, the already impressive scope of its predecessor is broadened by the addition of the new section on public health, and new chapters on coroners and access to healthcare.

A text with such ambitious scope inevitably poses a challenge in creating an intuitive and integrated structure. This is particularly so when dealing with a field as expansive as health law, which draws on a complex web of legal disciplines, instruments, and institutions. In addition, given the comprehensive nature of the text, and its sheer length, the authors face a challenge of rendering it fit not only for a new student of health law, but also for experienced practitioners seeking a detailed reference text. These challenges are handled elegantly.

The thematic structure, complemented by three distinct indices (sorted by statute and regulations, cases, and subject) suits both types of reader.

While by no means a set formula, most sections combine elements of historical background, setting the scene with present context, an exploration of legal concepts, a description of the current state of New Zealand law, and brief commentary of a more editorial nature. Thus, most sections can be read as discrete commentaries, allowing readers to “dip in” to topics of interest without needing to read the entire text.

Across various chapters, the authors provide extensive coverage of New Zealand’s legal position on the “classic” realms of bioethics – such as the beginning of life, the end of life, consent, competence and confidentiality. The content is brought to life by the extensive use of case studies, including both lesser-known examples, and more “iconic” cases that have entered the everyday lexicon of health lawyers.

The Code of Health and Disability Services Consumers’ Rights (the Code of Rights) is a running thread throughout. This is appropriate, given its centrality to the evolution of healthcare law in New Zealand. Its recurrence helps to periodically refocus the reader on familiar ground, and provide a sense of common purpose and principles among the complexity of the laws and concepts described. Particularly useful is the annotated version of the Code of Rights included as an appendix. The annotations provide crucial context regarding how key terms within the Code are interpreted for legal purposes, and cross-links to other legislation relevant to its interpretation. This is especially helpful to those who may be unfamiliar with the Code, including readers from outside New Zealand.

The chapter entitled “Public Health Law and People” explores how the law applies in cases of infectious disease (such as reporting of cases and isolation requirements), emergencies (such as pandemics), vaccination and health screening. These topics fit readily with the text’s overall focus on healthcare and the individual, including individual rights and autonomy (and their limits). At first glance, other chapters on public health law, pertaining to topics such as sanitation, drinking water, food and gambling, seem somewhat out of place in the context of the wider text. However, the inclusion of these chapters is a valuable and timely reminder that healthcare at the individual level is only one part, perhaps at times overemphasised, of why New Zealanders enjoy such a high standard of health overall. These public health chapters remind the reader that preventative public health initiatives and standards, often less visible in public discourse, contribute significantly to the positive health outcomes that New Zealanders enjoy. In this sense, their inclusion forms an important part of the legal and regulatory landscape painted by the text in its entirety.

Health law academics have at times been accused of focusing too much on rare and contrived scenarios that form the fodder for complex bioethical discussions. However, the authors steer around that potential criticism in two ways. First, their use of real-world case studies demonstrates that even the most “unlikely” of scenarios can and do happen, and are subject to legal proceedings. Second, and perhaps

more importantly, the text gives due and thorough attention to issues that commonly confront health practitioners in everyday practice – such as confidentiality, infectious disease reporting, vaccination refusal, complaints, and requests to access health information.

In accordance with this, a strong feature of the book for healthcare professionals is the detail offered on processes that they are likely to encounter at some point in their careers. Examples include involuntary psychiatric admissions, coronial proceedings, and complaints to the Health and Disability Commissioner. The authors' detailed and well-structured passages about these processes offer valuable step-wise guides for navigating these potentially stressful scenarios.

Another strength is that the authors include insights, drawn from their professional experience, that go beyond the black letter of the law, to comment on its application in reality – distinguishing between how things might seem, and how things are in practice. In addition, the authors are refreshingly frank about the limitations, ambiguities and gaps in the law, and provide thoughtful reflections on future directions for law and policy makers.

One interesting element – particularly for those without legal training – is the way in which the text challenges and corrects false but commonly held beliefs about health law. For example, the myth that next-of-kin can automatically provide consent for adults, that there is a single chronological “age of consent” for healthcare events in New Zealand, or that a promise between practitioners that correspondence will be kept confidential is sufficient grounds to deny a patient access to their health records.

The text also provides insights into issues of particular contemporary relevance. For example, the new chapter on access to healthcare addresses practitioners' responsibilities and patients' rights within an environment of limited healthcare resources. Other examples include the law's approach to vaccination and vaccination refusal, and the duty to warn (for example in cases of domestic violence).

A small number of conceptual diagrams are included, in order to visually represent the relationships between various nodes in inter-related processes (for example institutional arrangements for forensic care). If future editions are planned, the addition of more such diagrams would increase the accessibility of some of the more complex systems-based content.

Despite being a New Zealand-focused text, many aspects of *Health Law in New Zealand* will appeal to international audiences. The text presents engaging and incisive examinations of core concepts in health law – such as competence, duty of care, acts versus omissions, and negligence versus malpractice. In this way, international readers can still gain valuable insights into the conceptual foundations of health law, even if the detailed information on the legislative implementation of these concepts in New Zealand is less relevant.

The volume is also rich in cross-jurisdictional comparative content and international examples. References to Australia, the United Kingdom and United States are especially frequent. In addition, it details distinguishing aspects of New Zealand's health system, and law, that are of particular interest to those from other jurisdictions. Examples include the Code of Rights and the no-fault compensation scheme administered by the Accident Compensation Corporation (ACC).

Like its predecessor *Medical Law in New Zealand*, we expect this text will soon become a staple on the shelves of students, academics, lawyers, and health practitioners who wish to demystify the legal rights, roles, and responsibilities of those working and receiving care in the health sector.

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