BOOK REVIEW

HEALTH LAW IN NEW ZEALAND

By Peter Skegg and Ron Paterson (Editors)
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Health Law in New Zealand is the foremost text on the law affecting the New Zealand health sector. The successor to *Medical Law in New Zealand*[1] has been renamed in light of the expansion of subject matter to include public health law,[2] which is oriented at the population as a whole rather than the relationship between health practitioner and patient.[3] The name also aptly reflects the fact that medicine is only one of many health professions that are, by and large, subject to the same legal rules.

The new edition is a substantial resource reflecting the wealth of experience and expertise of the editors and contributing authors, both in academia and practise. It is aimed at legal practitioners, health practitioners and managers, students and the public. New Zealand's health law is unique because we have an enforceable code of patient rights[4] and a fault-free compensation scheme for accident and personal injury with a corresponding statutory bar on civil proceedings for personal injury.[5] *Health Law in New Zealand* should also be seen as a resource for lawyers and scholars internationally who may be interested in these features.

Although health law is recognised as a field in its own right, health could equally well be seen as a context in which the law applies. *Health Law in New Zealand* spans tort, crimes, contract, human rights, accident compensation, and administrative law. It is no wonder that the volume is so extensive. It covers the framework for the regulation of healthcare,[6] the standard of care required by health professionals,[7] consent,[8] health information,[9] mental health and intellectual disability,[10] the beginning and end of life,[11] human

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1 Peter Skegg and Ron Paterson (eds), *Medical Law in New Zealand* (Thomson Brookers, Wellington, 2006).
2 At vii.
3 At 774.
4 Code of Health & Disability Services Consumers Rights Regulations 1996.
5 Accident Compensation Act 2001, s 317.
6 Part A Introduction.
7 Part B The Standard of Care.
8 Part C Consent.
9 Part D Health Information.
10 Part E Mental Health and Intellectual Disability.
11 Part F The Beginning of Life and Part G The End of Life.

tissue, coroners,[12] public health,[13] complaints and investigations, and compensation.[14] The core areas of the book have been carefully updated to reflect the last decade's developments in law and policy. However, the mental health and intellectual disability section has been entirely rewritten[15] and chapters on access to healthcare,[16] the role of the Coroner[17] and public health law[18] have been added.

The new chapter on access to healthcare outlines the statutory regime for public healthcare,[19] including the need to ration healthcare,[20] statutory entitlements to treatment,[21] New Zealand's international obligations, prohibited grounds of discrimination,[22] and legal avenues to challenge denials of healthcare. Access to healthcare is essential to a flourishing society and yet a Ministry of Health survey recorded that 27 per cent of New Zealand adults experienced an unmet need for primary healthcare at some point during the previous year (2011), particularly women, Māori and Pasifika people.[23] Given that one objective of our publicly funded health system is "to reduce health disparities by improving the health outcomes of Māori and other population groups",[24] it would have been interesting to include a discussion of health equity.

The three replacement chapters on mental health law address the process, procedures and criteria for compulsory psychiatric treatment (the 'civil route')[25] and involuntary treatment of mentally impaired people and people with intellectual disabilities who are convicted of offences (the 'forensic route').[26] The legal framework and its application is described with great clarity, including a persuasive rights-focused interpretation of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (Mental Health Act).[27] The range of powers conferred on health professionals and others is broad,[28] which makes the mechanisms for protection of patient rights especially

12 Part H Human Tissue and Coroners.
13 Part I Public Health.
14 Part J Complaints, Investigations and Compensation.
15 Ch 14-16.
16 Ch 3.
17 Ch 24.
18 Ch 25-28.
19 Primarily the New Zealand Public Health and Disability Act 2000.
20 At 68.
21 Mental Health (Compulsory Assessment and Treatment) Act 1992, s 66; Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, s 51; Corrections Act 2004, s 75.
22 New Zealand Bill of Rights Act 1990, s 19(1) and Human Rights Act 1993, s 21(1).
23 Ministry of Health, *The Health of New Zealand Adults 2011/12: Key findings of the New Zealand Health Survey* (Ministry of Health, Wellington, 2012), section 7.
24 New Zealand Public Health and Disability Act 2000, s 3(1).
25 Ch 14-15.
26 Ch 16.
27 At 435-437.
28 At 451-471.

important. Although the effect of these rights is described as "powerful",[29] it is also noted that the Mental Health Act rights regime is "weakly enforceable, at best".[30] Inclusion of whānau is noted to be a major theme of the Mental Health Act. This means duties on healthcare professionals to consult rather than powers on family to exercise control.[31] In relation to the forensic route, the four structural diagrams[32] are particularly helpful given the five distinct regimes set up by three different statutes[33] leading to four different types of patient status.[34]

Coronial inquests are a rare example of an inquisitorial jurisdiction,[35] although in practise they can be litigious.[36] Coronial jurisdiction is accepted in 11-12 per cent of all deaths in New Zealand.[37] The new chapter on coroners[38] notes tension at the interface between doctors and coroners, which will "always be plagued by scope and interpretation issues necessitating dialogue".[39] It also includes an insightful discussion of the preventative role of coroners in making 'recommendations'.[40] A recent study recommended reform to make these more evidence-based, fair and effectively directed.[41] As noted in the chapter, New Zealand is unique in its restrictions on media reporting of suicide.[42] A preferable approach may be guidelines promoting responsible reporting.[43]

The new public health chapters are divided into topics that relate to people (infectious disease, emergencies, immunisation and screening),[44] places,[45] and products.[46] I particularly enjoyed reading about the haphazard history of public health regulation in New Zealand. The individual topics which follow

29 At 472.
30 At 473.
31 At 474-476.
32 "Figure 1 – The General Institutional Arrangements" at 484; "Figure 2 – Disposition and review procedures for those found unfit to stand trial" at 493; "Figure 3 – Disposition and review procedures for those found not guilty by reason of insanity" at 497; "Figure 4 – Procedures for disposition to involuntary treatment or care upon conviction" at 502.
33 Criminal Procedure (Mentally Impaired Persons) Act 2003; Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 and the Mental Health Act.
34 At 485.
35 At 756-757.
36 At 759.
37 Minister for Courts "Coroners Act Review: Proposals for Reform – Paper 1" (paper to Cabinet Social Policy Committee, 26 June 2013) noted at 743 footnote 42.
38 Ch 24.
39 At 745.
40 At 762-764.
41 J Moore and M Henaghan *New Zealand Coroners' Recommendations, 2007-2012* (Legal Issues Centre, Faculty of Law, University of Otago, October 2014).
42 Coroners Act 2006, s 71. This provision has been amended since publication by the Coroners Amendment Act 2016, s 46.
43 Coronial Council of Victoria *Suicide Reporting in the Coronial Jurisdiction* (Reference 3, Melbourne, June 2014) at 27.
44 Ch 26.
45 Ch 27.
46 Ch 28.

are an excellent reference source for rules relating to a particular topic, for example epidemics,[47] drinking water, [48] or radiation.[49]

Health Law in New Zealand is impressive in both breadth and detail. While it would be difficult to justify making it any longer, given the importance of the principles engaged by health law and its sheer volume, it would be interesting to explore health practitioners' understanding of relevant law.[50] If healthcare practitioners understanding of the law is poor, the potential for its proper application is slim.

47 At 809-811.
48 At 843-848.
49 At 860-865.
50 For example, AR Braun, L Skene and AF Merry "Informed Consent for Anaesthesia in Australia and New Zealand" (2010) 38 *Anaesthetic Intensive Care* 809; S Kruske et al, "Maternity Care Providers' Perceptions of Women's Autonomy and the Law" (2013) 13 *BMC Pregnancy and Childbirth* 84.