

Legal update - On the pulse: 10 health law issues to watch in 2016

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Welcome to the new year. To help you keep your finger on the pulse, we set out our top 10 health law issues to watch in 2016...

1. Lecretia's legacy - the euthanasia debate continues

Lecretia Seales' challenge to the law on assisted suicide has reignited public debate about an individual's right to aid in dying when terminally ill. While Ms Seales' case was ultimately unsuccessful (see [our legal update](#)), public interest (reflected by a petition signed by nearly 9,000 people) has spurred Parliament to consider the issue, with the Health Select Committee undertaking an inquiry into suicide and assisted dying. The opportunity for public submissions has now ended but it is expected that the Committee will undertake further hearing and discussion with interested parties. In addition, ACT Leader David Seymour has introduced the [End of Life Choice Bill](#) which will be debated by Parliament if drawn from the ballot. While previous Bills on assisted dying have been defeated at first reading (or withdrawn from the ballot out of concern the issue would become a political football during election year), the cross-party support evidenced when the petition was presented to Parliament and the [reported comments of the Prime Minister](#) in support of a law change suggest that rigorous debate will continue.

2. A spotlight on equal pay

The subject of equal pay for women in female dominated occupations will continue to be a hot topic in 2016. Following the landmark decision in the case of rest-home worker Kristine Bartlett (and a number of subsequent claims filed by midwives, social workers and others), a Joint Working Group has been established to consider and establish principles for dealing with claims of pay equity. The group is made up of a number of government and union representatives, with the unions that are a party to legal proceedings agreeing to put their claims on hold until April 2016 to allow time to work towards a practical solution. The Terms of Reference for the Joint Working Group are available [here](#).

3. The Problem Gambling Appeal - the Court of Appeal's turn

2016 will see the Ministry of Health challenge the High Court's ruling against the Ministry's decision in respect of its procurement of problem gambling services. The Ministry filed a Notice of Appeal in the Court of Appeal in August last year, following the Problem Gambling Foundation's successful judicial review of the Ministry's decision to award the major problem gambling services contracts to providers other than the Foundation. The case is important because it demonstrates that the courts will enforce the Government Rules of Sourcing and any rules that are contained in an agency's Request for Proposal document. If a government agency fails to comply with the requirements set out in the Rules of Sourcing and its own procurement documents, it runs the risk of its procurement decisions being successfully judicially reviewed. For further coverage of the High Court decision see [our legal update](#).

4. Better protection of our vulnerable children

The various changes and initiatives introduced by the [Children's Action Plan](#) and the [Vulnerable Children Act](#) will continue to be phased in during 2016. For many health and disability providers, the most significant change is the new requirement to carry out safety checks on staff who work with children. The requirement to safety check new "core children's workers" came into force in July last year and the requirement will extend to encompass all new "children's workers" in July this year. For more information about the safety checking requirements see [our legal update](#).

5. Changes to the Coroners Act - a new and improved system

Following an extensive review process, the [Coroners Amendment Bill](#) has now had its second reading and is due to come into force in July 2016. The proposed changes are wide ranging, but from a health provider perspective, a key change will be the new qualification on the requirement to notify when a death occurs while a patient is undergoing medical or surgical treatment. Under the amended Act, notification will only be required when the death is also "*medically unexpected*". Other significant changes include reduced restrictions on suicide reporting, requirements for organisations to provide written responses to Coroner's recommendations (see the supplementary order papers), and a new ability to direct a preliminary (non-invasive) inspection of a body before a full post mortem.

6. The legacy of the rude cake case - more claims in the Human Rights Review Tribunal?

The Human Rights Review Tribunal case of *Hammond v Credit Union Baywide* in March 2015 marked a sea-change in the level of damages awarded for a breach of the privacy principles. Since the decision was released there has been much speculation about a likely increase in the number of claims brought before the Tribunal. It may be that 2016 will be the year that further tests the scope of damages that are available from the Tribunal. The question for the health and disability sector in particular will be whether the principles that were applied in the privacy context in Hammond will also be applied in cases that come before the Tribunal via the Health and Disability Commissioner Act.

7. Health and Safety at work - the future is (nearly) here

The [Health and Safety Reform Bill](#) has passed and the Health and Safety at Work Act will come into force in April 2016. Key changes under the new Act include a broader definition of the key duty holder (the "Person Conducting a Business or Undertaking"), a new positive due diligence duty for officers, and increased penalties for breaches of the Act. To complement the new Act, various regulations and Codes of Practice are being drafted and will be consulted on over the next few months. Duty holders are advised to keep an eye out for new publications on WorkSafe New Zealand's website. You can also find our most recent articles about the new Act on the [health and safety section](#) of our website.

8. It's only natural - upcoming regulation of natural health products

After many years in progress, the new regulatory regime for natural health products, [the Natural Health and Supplementary Products Bill](#) is expected to have its third reading and come into force during 2016. The Bill is designed to address a range of problems with the current piece-meal regulatory regime, including inadequate controls on safety and quality, inadequate information about risks and benefits, and enforcement difficulties. Among other things, the new regime will set manufacturing standards, regulate ingredients, and regulate health benefit claims. The regime will also establish the Natural Health and Supplementary Products Authority, which will have significant powers and responsibilities to oversee compliance. The Bill is currently awaiting its third reading, and the full regulatory scheme will be phased in over three years once the legislation comes into force. For further information, see our [March 2013 article](#) and the [current text of the Bill](#).

9. Technology and telehealth

The widespread introduction of patient portals during 2015 is just one example of the increasing use of technology in health care across New Zealand. We expect 2016 will see yet more development as New Zealand truly begins to embrace virtual health care. To start the year off, the Medical Council of New Zealand has announced that it is reviewing its Statement on Telehealth. Among other things, the amended Statement may be extended to provide for the possibility of prescribing following a video (rather than 'face to face') consultation. A consultation paper has been released and submissions close on 29 March 2016. For further information, keep an eye out on the [Medical Council of New Zealand's website](#).

10. Fifty years in the making - a new compulsory treatment regime for substance addiction

Following a [Law Commission Report](#) and extensive consultation, the new [Substance Addiction \(Compulsory Assessment and Treatment\) Bill](#) was introduced into Parliament in December 2015. The Bill is intended to replace the Alcohol and Drug Addiction Act 1966 and provides a new regime for the compulsory assessment and treatment of people with substance addiction. Notably, in order to impose compulsory treatment under the Bill a person must not only be considered to have "severe substance addiction" but their capacity to make informed decisions about treatment must also be "severely

impaired". The Bill also expressly recognises that compulsory treatment must be a last resort, only to be used when voluntary treatment is unlikely to be effective. Indications are that the Bill will proceed through its first reading and on to Select Committee in early 2016.

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