

Top 10 health law issues to watch in 2018

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With a new year and a new Government, 2018 is set to be big on the health law front. So, to help you keep your finger on the pulse, we set out our top 10 health law issues to watch in 2018.

Lecretia's legacy – the End of Life Choice Bill takes centre stage

Nearly three years since [Lecretia Seales'](#) case was heard in the High Court, issues around assisted dying are set to take centre stage in New Zealand this year, with David Seymour's [End of Life Choice Bill](#) having passed its first reading in the House. As set out in the Bill's [Explanatory Note](#), the overarching purpose of the Bill is to give "people with a terminal illness or a grievous and irremediable medical condition the option of requesting assisted dying". After being drawn from the Ballot in mid-2017, the Bill was debated and passed its first reading 76 votes to 44 in December last year. The Bill has been referred to the Justice Select Committee, and public submissions closed on 6 March 2018. The Justice Select Committee has been given an extended nine month time-frame to prepare its report, with its final views due on 13 September 2018. Like the rest of Aotearoa, we will watch the progress of this Bill with great interest.

Privacy damages continue to trend

As we have indicated across previous updates, privacy remains a hot topic and a popular avenue for aggrieved complainants. The legacy of the 'rude cake' case ([Hammond v Credit Union Baywide](#)) is a notable rise in damages in the privacy space. This has fuelled complainants' willingness to litigate, resulting in a significantly greater workload for the Human Rights Review Tribunal. In a Judgment issued last year, the Tribunal noted it has experienced a [145% caseload increase](#) from 2014. It appointed a Co-Chairperson in August 2017 to manage this demand. We are also seeing an upwards trend of privacy damages earlier on in the complaints process, so much so that the Privacy Commissioner has issued [guidance](#) on the "value" of a complaint, monetary or otherwise, including anonymised examples of recent settlement figures. This is worth noting, as [just under 50%](#) of the Privacy Commissioner's files are now settling. Although not all settlements or Tribunal cases necessarily result in financial compensation, it is likely that damages for breach of privacy complaints will continue to grow in 2018.

Protecting our tamariki

Significant reform has occurred in the child protection and welfare space in the past few years, and will continue in 2018 and beyond. This year will see:

- Another phase of the Vulnerable Children Act 2014 coming into force, with the requirement for all existing children's core workers to be safety checked applying from 1 July 2018
- A renamed Ministry for Children, Oranga Tamariki, and Minister for Children (following controversy over the use of the term "vulnerable")
- A potential overhaul of domestic violence law (the Government has signalled that there may be more "bold changes" to those proposed in the [Family and Whānau Violence Legislation Bill](#))
- Consideration of a [Member's Bill](#) that would require newborns to be enrolled with a general practice and primary health organisation before six weeks of age (being the age of the first scheduled immunisation)
- [Legislation](#) that would establish a framework for measuring, targeting, and reporting on child poverty.

We also await the commencement of [new information sharing provisions](#) and the Code of Practice for Information Sharing provided for in the Oranga Tamariki Act 1989. These provisions will change current practice and increase the scope of information that can

be obtained for the purpose of determining whether a child or young person is in need of care or protection (among other things). As such, all agencies will need to familiarise themselves with these provisions and update their information sharing practices accordingly. If no Order in Council is issued, these amendments will come into force on 1 July 2019.

A focus on mental health

Widespread concern regarding the state of our mental health system made mental health an election issue in 2017. As promised by Labour during its campaign, a [Government Inquiry into Mental Health and Addiction](#) has been established. The Inquiry will be chaired by Professor Ron Paterson, a former Health and Disability Commissioner, and is focused on identifying unmet needs related to mental health and addiction, and recommending specific changes to improve New Zealand's approach to mental health. Hearing the voices of the community, people with lived experience of mental health and addiction problems, people affected by suicide, and people involved in preventing and responding to mental health and addiction problems is a key part of the Inquiry's approach. It is expected that a consultation document will be released at the end of March, with submissions, hearings, and direct engagement with interested parties to occur throughout the middle of the year. The Inquiry is required to report to the Minister of Health by 31 October 2018.

A new framework for treating severe substance addiction

On 21 February 2018 the [Substance Addiction \(Compulsory Assessment and Treatment\) Act 2017](#) came into force, one year after it was passed into law. The Act provides a new regime for the compulsory assessment and treatment of people with "severe substance addiction" whose capacity to make informed decisions about treatment is "severely impaired". The Act expressly recognises that compulsory treatment must be a last resort, only to be used when voluntary treatment is unlikely to be effective.

The Act provides for an initial eight-week period of compulsory assessment and treatment and includes an option to extend this period in select circumstances. As highlighted in our ["On the Pulse" update for 2017](#), this legislation has motivated a close review of current facilities and necessitated additional training for health professionals to ensure compliance with the new requirements. The Ministry of Health has developed a number of resources, which are available on its [website](#).

Nova Trust in Christchurch is the first facility designated as a "treatment centre" under the Act, and we anticipate further facilities being approved to address demand and access issues.

A renewed focus on pay equity

Pay equity will continue to be a topical issue in 2018 following the change in Government. Labour campaigned on the promise to make pay equity a priority, and to withdraw the pay equity Bill introduced by National in 2017. The Joint Working Group on Pay Equity Principles was reconvened in November 2017 (the original Group was set up in 2015 following the landmark decision in the case of rest-home worker Kristine Bartlett) and [has reported back to the Ministers](#), recommending clarifying and simplifying the process for initiating a pay equity claim, making no changes to the principles on comparators, and amending the Equal Pay Act 1972 to implement the principles. It is expected that legislation will be introduced mid-year. The Government has also announced recently that it will extend the Care and Support Pay Equity Settlement to mental health and addiction support workers, and has entered negotiations with unions and employers.

Medicinal cannabis regulation – high on the Government's agenda

Two different medicinal cannabis Bills have already sparked debate in the House this year – one of which is Government-sponsored, the other a Private Members' Bill that was voted down at first reading. The [Government Bill](#) was introduced by Health Minister Hon Dr David Clark on 20 December 2017. The Bill would provide a statutory defence enabling people suffering from terminal or chronic illness to possess and use cannabis, with a view to removing that defence once "affordable quality products are available under a proposed medicinal cannabis scheme". This aims to address the prohibitively high prices of currently available cannabidiol products, which can now be [prescribed without Ministry of Health approval](#) (a change which came into force in June last year). Clark has described the Bill's scope as a "balance" that "won't make all of the activists happy". Submissions are due by 21 March 2018, and the Committee is due to report back on 1 October 2018.

The lawfulness of recreational cannabis use is also likely to be up for debate, with public referendum on the issue by 2020 forming part of the [Labour-NZ First coalition agreement](#).

Water, water, water

Drinking water continues to be a hot topic. We expect many of the recommendations of the [Havelock North Drinking Water Inquiry](#) have been or are in the process of being implemented, and recommendations relating to changes to the Health Act 1956 and the Resource Management Act 1991 are being considered. We also expect that the [Health \(Fluoridation of Drinking Water\) Amendment Bill](#) (with minor amendments) will be enacted this year, transferring decisions about the fluoridation of water from local authorities to DHBs. Of course, the Bill would not end controversy surrounding fluoridation and, if passed, DHBs will no doubt face the same pressures as local authorities have in relation to fluoridation decisions in recent years. A good example being the legal challenge to South Taranaki District Council's 2012 decision to fluoridate drinking-water supplies in Patea and Waverley. While the decision has been upheld by both the High Court and Court of Appeal, the Supreme Court granted New Health leave to appeal in February 2017, as outlined in [this alert](#). The Supreme Court has reserved its decision on the appeal and we await its judgment on this important issue.

Mandatory registration of social workers

Mandatory registration of social workers appears likely following the introduction of the [Social Workers Registration Legislation Bill](#) last year. However, while the [Social Workers Registration Board](#) and the [Aotearoa New Zealand Association of Social Workers](#) support mandatory registration, both have expressed concerns about aspects of the proposals, including the proposed mechanism for defining what social work practice is (the proposed definition of "practising social work" focuses on the words used to describe the person's role or position within an organisation, rather than the tasks performed or services provided). It will be interesting to see whether amendments to this definition are recommended following the Select Committee process (submissions closed on 31 January 2018, and the Select Committee report is due on 29 March 2018). In any event, any move to mandatory registration will take some time, with the current proposal providing for a two year lag between the enactment of the Bill and mandatory registration coming into force.

Accident compensation reform on the horizon?

In the wake of a series of high profile reports and reviews, a comprehensive reform of the ACC appeals process may be on the cards. Following an initial United Nations briefing in 2014 on personal injury and access to justice, Acclaim Otago has produced [two further reports](#) funded by the Law Foundation. Released in 2015, the first report indicates "widespread and systemic barriers to access to justice" hinder the current ACC appeals process. In response, the then Minister for ACC commissioned Miriam Dean QC to review these findings and issue an [independent report](#). The report contains 20 recommendations for change in the accident compensation sector, including reforms to:

- Improve the claims review process, for example, a tracking and triaging process for claims, an increase in Government contribution to claimants' costs, and a greater emphasis on settlement
- Assist claimants' understanding of and access to the law, for example, public access to case law and anonymised review decisions, increased guidance on how to prepare for review hearings and navigate the Act, and increased funding for advocacy services
- Address difficulties around claimants' access to medical evidence.

Acclaim Otago's second report, published in May last year, estimated that each year 200,000-300,000 claimants are formally declined cover or compensation. It called for the establishment of an independent "personal injury commissioner" to oversee the accident compensation scheme. Both the previous National Government and the new Labour-NZ First-Green bloc have [indicated support](#) for addressing Dean's recommendations, so it is possible we may see changes a foot in 2018.

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