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Announcements

Victoria University of Wellington Student and Alumni Sub-Series Issue 11: General Topics (I)

General Topics (I) is the eleventh in 2020 of several issues of the Student/Alumni Sub-Series of the Victoria University of Wellington Legal Research Paper Series.

The Student/Alumni Sub-Series was launched in 2015. It distributes a selection of Honours and Postgraduate papers from Victoria University of Wellington Law School. The sub-series includes both general and thematic issues.

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"A Call for Reform of Special Guardianship Legislation in New Zealand"

Victoria University of Wellington Legal Research Paper No. 31/2020

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This paper contends that special guardianship legislation in New Zealand is in need of reform. Special guardianship orders (SGOs) provide permanency akin to adoption, though unlike adoption, SGOs preserve the connection between a child and their birth family. However, the law surrounding SGOs is currently incoherent and restrictive. Three reasons are identified. First, the current scheme enacts a dual pathway; an applicant who has existing guardianship orders under the Care of Children Act 2004 (COCA) must meet a higher threshold test compared to an applicant without such orders. As a result, SGOs are only available where the stability of a placement is being threatened by another guardian's interference. Second, an applicant must navigate a complex route through the Oranga Tamariki Act 1989 (OTA) when

Second, an applicant must navigate a complex route through the Oranga Tamariki Act 1989 (OTA) when applying under the lower threshold route. Third, the empowering legislation is positioned under the OTA which imports a restrictive contextual requirement of child abuse and neglect, barring access of carers to SGOs even with the consent of birth parents. This paper proposes three options for reform. The first streamlines the legislation under the lower threshold route. The second extinguishes the dual pathway. The third, and preferred option, encompasses the changes in option two whilst placing the enabling legislation in the COCA to remove the contextual requirements of the OTA.

"The Devil's in the Detail: The Coherence of Opt-Out Religious Instruction in Modern New Zealand State Primary Schools"

Victoria University of Wellington Legal Research Paper No. 32/2020

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Sections 78 and 79 of the Education Act 1964 create the religious instruction "opt-out scheme" whereby otherwise secular state primary schools can close to allow for religious instruction and observances. Despite perpetual controversy, the scheme has remained untouched for 57 years. With Hines v AG awaiting its hearing in the High Court, this hands-off approach is no longer sustainable. This essay examines the history of the opt-out scheme and its present incoherencies, uncovering a scheme which is deeply informed by the societal context and competing interests under which it operates. Changes to state education in past decades have resulted in the opt-out scheme allowing more than simply bible-in-schools into classrooms. The scheme has become a gateway for aspects of tikanga Māori where the line between the spiritual and the cultural is not clear cut. Thus, in a reform debate publicly and politically saturated by the religious–secular divide, in reality the greatest threat exists in relation to Māori. This article concludes that while the opt-out scheme's incoherence means reform is necessary, simply replacing the scheme would fundamentally threaten the position of tikanga Māori in schools. In this way, reform can only be done in full partnership with Māori as a key stakeholder.

"Grandma Got Run Over by the Doctor: An Examination of the End of Life Choice Bill with Reference to the German Approach"

Victoria University of Wellington Legal Research Paper No. 33/2020

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With the advent of the End of Life Choice Bill 2019, the matter of assisted dying has again come to the forefront of current political debate. This Bill, like past attempts to create an assisted dying framework, lacks a strong underlying value guiding its approach. In 2017, Germany confronted the topic of assisted dying. Unlike New Zealand's legislature-driven approach, the German situation came about following a judicial challenge to laws which impeded the claimant's wife's right to uphold her dignity. This paper argues that the German approach to assisted dying, with its underlying value of dignity, results in a better assisted dying scheme than the New Zealand Bill. This focus on dignity leads to two major benefits which this paper investigates. The first is that it results in a process which legalises only medically assisted suicide and not euthanasia. This distinction, if incorporated into the New Zealand Bill, could result in a safer and more Bill of Rights Act-compliant approach. The second benefit is that having dignity as a cornerstone leads to a principled and non-arbitrary set of eligibility criteria. This paper also examines and recommends a further aspect of the German approach: its prohibition on the commercialisation of assisted dying.

"Not Guilty by Reason of Insanity: Balancing Victims' Rights and the Insanity Defence"

Victoria University of Wellington Legal Research Paper No. 34/2020

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Under s 23 of the Crimes Act 1961, defendants in New Zealand that are deemed insane at the time of committing the actus reus of an offence are able to be found not guilty by reason of insanity. As the defendant cannot be found criminally responsible for their actions, they are not punished with a criminal record or prison sentence. However, due to public safety concerns, those acquitted under the insanity defence are usually required to undertake compulsory mental health treatment and are therefore dealt with under the health system, in lieu of the criminal justice system. Due to this, victims of those found not guilty by reason of insanity are not afforded the same rights as victims that fall under the ambit of the criminal justice system. With the current focus on victims' rights following the Te Tangi o te Manawanui Recommendations for Reform as part of the H paitia te Oranga Tangata Safe and Effective Justice initiative, attention is also being focused on improving the experience for victims of those found not guilty by reason of insanity. The recent drawing from the ballot of the Rights for Victims of Insane Offenders Private Member's Bill and the publicity surrounding Wendy Hamer's victims' rights petition has highlighted the need to discuss this issue. Using cases from New Zealand, Canada and Australia, this paper considers why reform is needed and considers how the rights and interests of victims of defendants found not guilty by reason of insanity can be strengthened, whilst still ensuring the overarching rationale of the insanity defence is protected. A number of suggested reforms intended to improve victims' rights are found to be inappropriate due to the fact they undermine the key rationales of the defence: treatment, not punishment; community safety; and the medical nature of decision making. The paper recommends and concludes that strengthening service rights and providing specialised assistance will provide a better system for victims of those found not guilty by reason of

insanity without undermining the working of the defence itself.

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About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachussetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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