

EDITOR'S NOTE

Pathways

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Ten years ago, the New Zealand Law Foundation provided \$3,285 to support the establishment of this Journal.¹ The Foundation records the vision for the Journal as follows:²

The Public Interest Law Journal of New Zealand is an annual, refereed publication showcasing articles written by New Zealand law students on topics of importance to vulnerable groups in society as well as the general public. The Journal will provide students with a further opportunity to share their university writing, and will provide an interesting insight into the issues that are attracting the attention and concern of those who will become the next generation of lawyers in Aotearoa.

How successful has the Journal been at achieving these aims?

The Journal has been an annual publication. The first issue was published in 2014, and subsequent issues have been published annually, with this 2023 issue being the 10th issue.

The Journal continues to be refereed. The Editors-in-Chief do a desk review of the submissions and decide which submissions will be sent for review. The Academic Review Board Manager sends those submissions to one or more academic reviewers, who return feedback on a form. The form seeks feedback on substance (including originality, research quality, counter-arguments, completeness, accessibility to non-experts, and contribution to legal scholarship) and form (including writing quality, appropriateness of sources, suitability of citations, syntax, grammar, signposting, and clarity of direction, and absence of careless errors). Ultimately, the reviewers advise on each submission's publication potential. The reviewers in that year compose the Academic Review Board for that issue.

The Journal is a showcase. Originally, the Journal was hosted online at <http://piljnz.org>. In 2020, its online home moved to the University of Auckland's website, alongside two other Faculty of Law publications: the Auckland University Law Review; and Te Tai Haruru

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1 "New Online Legal Journal" (June 2014) The Law Foundation New Zealand <www.lawfoundation.org.nz>.

2 "New Online Legal Journal", above n 1.

Journal of Māori and Indigenous Issues.³ The Journal is featured on HeinOnline.⁴ The Journal is also featured on the New Zealand Legal Information Institute (NZLII) website, which provides open access to the Journal's articles. NZLII usage statistics reveal that the Journal's articles received 37,606 total clicks in 2022 and 50,577 total clicks in 2023, indicating that the Journal is widely read.⁵

The Journal solely publishes work written by New Zealand law students, providing an opportunity for the best student work to be published and disseminated around New Zealand and the world. Often, these students are graduates by the time the work is published. The authors and editors often go on to be rising stars in the legal profession, government and many other fields, in New Zealand and overseas. Many have gone on to be Judges Clerks—for example, two Editors-in-Chief in the latest two issues have become Judges Clerks at the New Zealand Supreme Court, the highest court in the country. This is a testament to the talent attracted to the Journal's Editorial Board and the respect that judges have for the skills that students develop during their time with the Journal.

Finally, the Journal continues to publish articles on topics of importance to vulnerable groups in society. One need only look at some of the topics of articles published in the last two issues, which include approaches to migrant sex work, assisted dying for persons with psychiatric illness, responses to family violence, rehabilitation for young adults from care and protection backgrounds, human rights of incarcerated persons, rights of adopted children, and healthcare for persons who are ill, to name but a few. The Journal will continue to publish the best available material in the scope of *public interest law*, a term that has been defined and explored several times in previous notes for the Journal.

I have now served as the Managing Editor for 10 issues of the Journal. The Editors-in-Chief select the articles and appoint and lead the Editorial Board to prepare the articles for publication. In my role as Managing Editor, I have mentored the Editors-in-Chief and done the final checks for each issue, which usually involves some minor stylistic edits and citation fixes, bringing a fresh eagle-eyed look and an awareness of decisions made by previous Editors-in-Chief, which comes with being in the role for several years. I have also sorted the front matter, liaised with our online hosts and, for the past five or so issues, appointed the Editors-in-Chief. Oh, and authored or co-authored 10 editor's notes! Ten years is a long time to commit to a project, especially when it is not part of your academic service load, meaning it is an after-hours, voluntary endeavour for the evenings and weekends. I wanted to make it to 10 issues and I have made it! Over the years, so many of our editors and authors have thanked me for keeping the Journal going—it truly provides New Zealand law students with opportunities they would not otherwise have to develop skills, accumulate work experience and get their work published, supporting many of our hardest-working students to work their way into their career of choice. This was especially so between 2016 and 2022 when the New Zealand Law Students' Journal, which previously provided these opportunities, went on hiatus. It has been greatly rewarding.

Many of my supervisees get their work published. But not in this Journal. Whilst it is the Editors-in-Chief who select the articles to be published⁶ and I have not had any role in selecting articles as the Managing Editor, it is best to avoid any appearance of bias.

3 "Research publications" University of Auckland <www.auckland.ac.nz>.

4 "Public Interest Law Journal of New Zealand" HeinOnline <<https://heinonline.org>>.

5 Email from Judi Eathorne-Gould (NZLII Administrator) to Jayden Houghton regarding NZLII usage statistics (18 February 2023); and Email from Judi Eathorne-Gould (NZLII Administrator) to Jayden Houghton regarding NZLII usage statistics (9 March 2024).

6 I stepped in as the Editor-in-Chief for issue 3 and selected the articles for that issue in my capacity as Editor-in-Chief.

From the next issue, with no operational involvement in the Journal, I think I will feel comfortable with encouraging my supervisees to submit their work. It would be excellent to see the Journal publish more work on legal issues impacting Māori specifically, especially given the current political climate and recent assaults on the Treaty of Waitangi.⁷

Althea Tarrosa has joined me as a Managing Editor of the Journal this issue. Althea will take over as the sole Managing Editor from the next issue. Althea is a graduate of the Faculty of Law, University of Auckland. Althea was an Editor-in-Chief for the Public Interest Law Journal of New Zealand in 2020. She was also an Editor-in-Chief for the Auckland University Law Review in 2022 and a member of the Advisory Board for that journal in 2023. Althea is passionate about the Journal and a talented editor, as well as a smart and sensible leader. I wish Althea all the best in this role. I know she will do an amazing job at ensuring the Journal continues to achieve its aims. I will still be around for advice, if needed.

Hāpaitia te ara tika pūmau ai te rangatiratanga mō ngā uri whakatipu

Foster the pathway of knowledge to strength, independence and growth for future generations

This issue features 11 articles. It begins with an article penned by an **Anonymous** author on migrant sex work in New Zealand. The author adopts a critical lens to examine the Prostitution Reform Act 2003, specifically s 19 which bars migrants from engaging in sex work. The author addresses and analyses the racist roots of the legislation. They also highlight the need to listen to affected communities and argue for full decriminalisation of sex work.

New Zealand's Pharmaceutical Management Agency (Pharmac) has been subject to review instigated by interest group lobbying. **Connor Browne** examines the political environment of this review using interest-group theory. Browne uses four case studies to illustrate the political pressure that interest groups can exert on government decision-making. Browne argues that criticisms of Pharmac have dubious merit and primarily come from private interest groups. The author concludes that Pharmac's apolitical model has been highly successful and needs to be preserved.

How can we apply te ao Māori to redefine property rights? **Cici Davie** aims to broaden the discourse on property rights by breaching the stronghold of legal formalism. Davie contends that states should adopt a governance ethic of kaitiakitanga rather than Earth trusteeship because it provides a conceptual basis for understanding property entitlements through a genealogical paradigm that weaves ancestral, social and environmental threads of identity, practice and purpose. Davie illustrates that te ao Māori offers a more principled foundation for governing how property functions in the contemporary world.

Bayley Kalach examines the use of cultural reports under s 27 of the Sentencing Act 2002. Kalach challenges the assumed benefit of s 27 reports and argues that sentencing judges require a cohesive and balanced approach when accounting for an offender's background trauma. Kalach notes that the potential value of s 27 reports depends on recognising the limitations of criminal punishment and argues for a corresponding structural change in the criminal justice system.

7 See "Equal rights for all": <https://web.archive.org/web/20240209025006/https://www.treaty.nz>.

Next, the issue considers the intersecting nature of family violence and relationship property in New Zealand. **Beatrice Martinez** argues that the Property (Relationships) Act 1976 does not allow for the consideration of family violence. Martinez demonstrates the importance of considering family violence in relationship property proceedings. The author proposes reform to New Zealand's relationship property law based on comparative examination of other jurisdictions.

Sam Meyerhoff considers the underexplored phenomenon of New Zealand lawyers acting as judges in South Pacific Island nations. Meyerhoff explains why this practice has become so widespread, its advantages and disadvantages, and how it creates cultural, fiscal, and practical risks. Meyerhoff examines New Zealand's moral or professional duty, absent any legal obligations. The author proposes reforms aiming to balance the need for change, and the sovereign rights of countries involved.

Phoebe Moir investigates four inquiries which sought to learn from disaster events to better prepare for future similar disaster events. Moir considers whether these inquiries actually achieve assumed purposes, such as punitive accountability and public catharsis. The author concludes that alternative mechanisms like independent reviews are better for achieving a learning purpose.

New Zealand does not allow assisted dying solely for psychiatric illness. **Dexter-James Peffers** analyses the different approaches in the Netherlands and Canada, and argues that these legal regimes cannot be ethically justified. The author examines a few key issues, including incurability, mental capacity, structural vulnerability and suicide prevention. He also identifies potential procedural safeguards for future consideration.

Litigation funding has grown exponentially overseas, in both common and civil law jurisdictions. Yet, in New Zealand, the statutory position and associated regulation is muddled. **Sam Robertson** analyses the New Zealand Law Commission's recommendations in its report on *Class Actions and Litigation Funding*⁸ and proposes a regulatory solution to New Zealand's third-party litigation funding market. In doing so, Robertson explores the role of third-party funders in New Zealand's legal industry and examines the regulation of litigation funding in various common law jurisdictions.

Despite New Zealand's ratification of the United Nations Convention on the Rights of the Child in 1993, Parliament has refrained from amending the Adoption Act 1955 to better fulfil New Zealand's art 12 obligations. **Georgia Warwick** addresses the importance of placing the child's voice and agency at the forefront of New Zealand's adoption legislation. Warwick recommends reform of the current legislation to impose a statutory duties-of-care model on decision-makers and officers of the Family Court.

In our final article, **Cameron Wood** explores sentencing corporations for corruption and bribery, and critically assesses whether these sentences are effective. Wood argues that the current legislation only empowers New Zealand courts to impose fines for corruption and bribery offences. New Zealand law does not sufficiently deter or denounce corporate bribery and corruption. Wood recommends making other options available to the courts, such as probation orders, dissolution orders and debarment.

I would like to end by acknowledging the work of those who made this issue possible. Christopher McCardle and Mingze Sun, the Editors-in-Chief, have been a pleasure to work with. The articles they selected are excellent and their editors have been well-trained and effectively led to exhibit the articles in their best light. The academics on the Academic Review Board are always appreciated for helping to ensure the Journal only accepts articles that make a scholarly contribution to the literature in line with the Journal's aims.

8 See Law Commission *Class Actions and Litigation Funding* (NZLC R147, 2022).