

# Australian Property Law Journal (APLJ)

## Volume 31 Part 2

(articles and book review included in this part are linked to the LexisNexis platform)

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#### Articles

##### [A right to adequate housing: Translating ‘political’ rhetoric into legislation](#)

— *Julie Copley*

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In Australia, calls for a statutory right to adequate housing predate the enactment of the current Australian human rights statutes, with recent recommendations made by a Victorian parliamentary committee and the Australian Human Rights Commission. In effect, the recommendations are for legislative processes translating the politics of homelessness and housing inadequacy, in an ongoing way, into practical statutory measures. To build a framework to inform and assist the legislative processes, this article analyses contemporary property theory, including about a right to adequate housing, and legal, political and constitutional theory directed to the positivisation of human rights. As the core of a right to housing is a place to live in security, peace and dignity, an essential component of a framework will be the functioning in Australian jurisdictions of human dignity, the source from which all other human rights are derived.

##### [The residential red zone: A managed retreat experiment in Christchurch, New Zealand](#)

— *Elizabeth Toomey*

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Climate change and its effects on the environment are well-debated topics worldwide. The (now former) Labour government in New Zealand took steps to anticipate these effects through the first national adaptation plan, the national climate change risk assessment and resource management reforms. The latter comprised the proposed repeal of the Resource Management Act 1991 by three discrete statutes: the Natural and Built Environments Act, the Spatial Planning Act and the Climate Adaptation Act. The first two became law on 23 August 2023. In the lead-up to the general election on 14 October 2023, Parliament was dissolved before the Climate Adaptation Bill was introduced.

The newly formed National/ACT/New Zealand First coalition disagrees with this approach. It promises to repeal the two new Acts by the end of 2023, and there is no mention of the Climate Adaptation Bill. While this article does not discuss the now abandoned legislative provisions, various extensive high-level documents have considered at length how to conceptualise managed retreat and explore what principles might underpin a new system and how it might be funded. In all this documentation, there is barely (if any) mention of the fact that the New Zealand Government has already engaged in a managed retreat exercise in the wake of the Canterbury earthquakes in 2010/2011. Many lessons can be learnt from this experience, including our highest court’s scrutiny on how this was dealt with and what went wrong.

In *Quake Outcasts v The Minister for Canterbury Earthquake Recovery* [2016] 1 NZLR 1 the Supreme Court deliberated on the following questions for which they had been granted leave to appeal:

(a) Was the establishment of the residential red zones (RRZ) in Christchurch lawful as being a legitimate exercise of any common law powers or 'residual freedom' the Crown may have, given the terms of the Canterbury Earthquake Recovery Act 2011 (CER Act 2011)?

(b) Were the offers made by the Crown to RRZ property owners under s 53 of the CER Act 2011 ('Acquiring or disposing of property') lawfully made? In particular:

(i) Was there a material failure to comply with the Act?

(ii) Was there a rational basis for the distinction drawn between those owners who were insured and those who were uninsured?

This article examines the Court's conclusion (and the two very detailed dissenting judgments) and emphasises the Crown's errors. This serves as a timely reminder of the intricacies required should the Crown, in the light of climate change, pursue a managed retreat exercise of flood-prone areas in New Zealand.

The article also explores the aftermath of any massive clearance program: how does the Crown negotiate transfers with the relevant local council and how does that council decide what to do with the land? Despite the optimistic Regeneration Plan 2018, little progress has been made 12 years on from the earthquakes.

## Understanding insurance vocabulary in loan transactions

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— *Heidi Bucher and Gary A Goodman*

This article discusses the importance of understanding the vocabulary of insurance (eg, the various coverages required by lenders and the applicable terms and conditions required in loan documents), particularly as it applies to insuring collateral in commercial loan transactions.

## Book Review

*The House in the Rue Saint-Fiacre: A Social History of Property in Revolutionary Paris*, H B Callaway

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— *P T Babie*