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WILL DEMOCRATIC FREEDOMS AND HUMAN RIGHTS SURVIVE A SECOND PANDEMIC IN AUSTRALIA? A CASE STUDY OF THE LEGAL FOUNDATIONS AND MECHANISMS OF IMPLEMENTATION OF AUSTRALIA’S COVID-19 RESPONSE

Andrew Hemming

This article is a case study of the laws and regulations at both the Commonwealth and State level that were relied upon to uphold Australia’s COVID-19 response, and the behavioural mechanisms used by governments in Australia to implement these regulatory policies. The question will be posed now that borders have been re-opened and normality restored in a “we will have to live with COVID-19” environment, whether the draconian restrictions on democratic freedoms and human rights could reoccur unless Australia changes the manner in which these laws and regulations are imposed by governments and interpreted by the courts, especially given the High Court’s decision in *Palmer v Western Australia*. This question is particularly important given the announcement on 21 September 2023 that the Commonwealth Government was setting up a COVID-19 Response Inquiry to identify lessons learned to improve Australia’s preparedness for future pandemics.

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WALKING THE TIGHTROPE: COMMUNICATIONS WITH EXPERT WITNESSES FOLLOWING NEW AIM V LEUNG

Claudia Oakeshott and Claire Smart

The decision of the Full Court of the Federal Court in *New Aim v Leung* (2023) 410 ALR 190, overturning *New Aim v Leung* [2022] FCA 722, raised again the sometimes fraught process associated with communicating with independent expert witnesses. It confirmed that there are few bright-line rules—what must be disclosed will depend on the circumstances of the case. Similarly, the test for determining whether privilege over communications with experts has been waived is context-dependant. This article examines the appeal decision, reviews the principles that apply to waiver, and seeks to provide some guidance in navigating this complex area. Practitioners should approach communications with independent experts with care, and with an eye on the consequences for both the weight that might be given to the expert’s evidence, and for waiver of the legal professional privilege that would otherwise apply. 596

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