

NZULR ABSTRACTS
Vol 28, No 3 June 2019

**THE OFFER BACK PROVISION IN S 40 OF THE PUBLIC WORKS ACT 1981 –
DECISIONS CONTINUE TO FUEL THE DEBATE**

ELIZABETH TOOMEY

This article pulls together the various strands of judicial interpretation with respect to the offer back provisions of s 40 of the Public Works Act 1981. It investigates a number of decisions in the last decade that demonstrate the complexities of the offer back provisions. Two particular decisions dominate the debate: Mark v Attorney-General and Williams v Auckland Council. This contentious statutory provision often raises more questions than answers.

**BLOCKCHAIN AND DECENTRALISED AUTONOMOUS ORGANISATIONS (DAOS):
THE EVOLUTION OF COMPANIES?**

ALEXANDRA SIMS

Blockchain's potential uses are wider than simply cryptocurrencies. Blockchain can and is being used to create Decentralised Autonomous Organisations (DAOs). DAOs represent a radical rethink of how organisations, such as companies, can be structured and run, including changes in ownership, governance, decision-making and profit distribution. DAOs not only lower transaction costs dramatically – and transaction costs are the very reason for a firm's existence – through their use of smart contracts, they can prevent laws and other rules being broken. This article shows that business structures have evolved over the centuries and DAOs are simply another evolution. DAOs require a rethink of the law, including the granting of legal personality to DAOs as well as granting limited liability to DAO token holders.

**TWO LEGAL CONCEPTS COLLIDE: THE INTERSECTION OF UNFITNESS TO STAND
TRIAL AND COMMUNICATION ASSISTANCE**

KELLY HOWARD, CLARE McCANN, ANDREA EWING, MARGARET DUDLEY AND WARREN BROOKBANKS

This article draws on findings from a recent qualitative study which highlighted two main issues arising from the alliance between communication assistance and unfitness to stand trial enquiries in the New Zealand criminal justice system. Communication assistance is a form of specialist support for defendants to enable them to understand and/or give evidence at trial. Unfitness to stand trial refers to enquiries as to the defendant's ability to participate in his or her trial; to conduct a defence or instruct counsel to do so. The two issues are: (1) how health assessors (who assess unfitness) and communication assistants should best work together; and (2) a lack of clarity regarding the nature and scope of the communication assistant's role when unfitness is raised as an issue. The authors propose a new "effective participation" test for unfitness to stand trial in New Zealand. It is argued that communication assistance could be better accommodated within such a test. The two practical issues could then also be resolved more easily. Such a test would also be more in line with New Zealand's international obligations to people with disabilities under the United Nations Convention on the Rights of Persons with Disabilities.

NO ORAL MODIFICATION CLAUSES IN NEW ZEALAND – NOW WHAT DO WE DO?

MARCUS ROBERTS

TINO RANGATIRATANGA AND CONTRACT LAW IN NEW ZEALAND

KIRI TOKI