

# PUBLIC LAW REVIEW

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Most Australian Parliaments promote the view that they are the institutions best positioned to scrutinise and protect the human rights of all. This article examines the varying standards of rights review being performed by parliamentary committees across the nine Australian jurisdictions. In mapping the diversity among Australian Parliaments in this regard, it points out that in four Australian Parliaments there is no parliamentary committee providing formal or systematic scrutiny of all Bills on a rights basis or indeed any basis. ....	19
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The purpose of this article is to establish the state of authority on the role of s 5 in applying the <i>New Zealand Bill of Rights Act 1990</i> – a point on which there is ongoing uncertainty. The leading Supreme Court decision in <i>Hansen v The Queen</i> confirms that the justified limits provision in s 5 plays a central role in determining what the Bill of Rights requires, and that the rights-consistent interpretation requirement in s 6 must be read subject to it. It further sets out sequenced tests to use for this purpose. But that decision also contains dicta contemplating exceptions to the approach it sets out, and the Supreme Court’s subsequent decisions in <i>Brooker v Police</i> and <i>Morse v Police</i> appear to involve alternative approaches. As a result, the role of s 5 continues to be questioned in the lower courts. On the best reading of these cases, the <i>Hansen</i> dicta contemplating exceptions only apply to the sequenced tests, not to the central role of s 5. The different approach in <i>Brooker</i> and <i>Morse</i> and other cases involving provisions that are capable of a “continuum” of meanings is consistent with that. The “continuum type” provisions are read subject to an “implicit proviso”: the provision applies only where any resulting limits on rights can be justified in terms of s 5. This approach enables s 5 to be given its central role without following the <i>Hansen</i> sequence (either modifying the order in which ss 5 and 6 are applied, or dispensing with the first step in the <i>Hansen</i> sequence). ....	39

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