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## Announcements

### **Victoria University of Wellington Student and Alumni Subseries Issue III: General Topic Issue**

The General topic issue is the third in 2018 of several issues of the Student/Alumni sub-Series of the VUW legal Research Papers.

The Student/Alumni sub-Series was launched in 2015. It distributes a selection of honours and postgraduate papers from Victoria University of Wellington Law School.

The sub-Series includes both general and thematic issues.

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## **LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS**

■ **"Of Demagogues and Dictators? The Redemption of Constitutional Referenda in New Zealand"** 

*Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 9/2018.*

Referenda have been strongly criticised in recent years. Western liberal democracies are fixated on representative democracy, with elections as the pinnacle of democratic participation. However, political apathy and voter dissatisfaction are pressing problems. This paper argues that referenda can be a democratically legitimate method for major constitutional change. The problems canvassed in the literature and witnessed in recent examples, such as "Brexit", are merely problems of practice not principle. To redeem constitutional referenda, a comparative approach is adopted to analyse the referendum methods used in New Zealand, Australia, Ireland, Switzerland and the United Kingdom. From this assessment, a model provision is developed that should guide the process for any major constitutional referendum in New Zealand. It injects a dose of direct, participatory and deliberative democracy into our representative system, thereby improving the democratic legitimacy of constitutional referenda.

## "Question Time or Show Time? Analysing the Value of Question Time as a Parliamentary Accountability Mechanism"

*Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 10/2018*

**PITA ROYCROFT**, Victoria University of Wellington, Faculty of Law, Student/Alumni  
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This paper analyses the value of question time in New Zealand as a parliamentary accountability mechanism. It uses Professor Mark Bovens' definition of accountability as a social relation to develop a bespoke, criteria-based evaluative framework for assessing question time's performance. Six aspects of question time are evaluated: supplementary questions, patsy questions, the rule governing the adequacy of replies, the power to transfer responsibility for questions, ministerial responsibility, and media reporting practices. Each of these aspects is found to hinder the House of Representative's ability to hold Ministers to account in question time. Several recommendations for reform are proposed for each aspect. Unless Members of Parliament and Ministers are willing to implement meaningful change, question time will have little value as a parliamentary accountability mechanism, and the principle of responsible government will be diminished.

## "The Triple Lottery"

*Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 11/2018*

**BRONWYN NEAL**, Victoria University of Wellington, Faculty of Law, Student/Alumni  
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Under s 32 of the Sentencing Act 2002 reparation may be imposed for "emotional harm" and "loss or damage consequential on [...] physical harm". This conflicts with New Zealand's Accident Compensation Scheme (ACC) if the physical or emotional harm is covered by ACC. Following the Supreme Court decision in *Davies v Police*, amendment to s 32 allows reparation to be imposed for "statutory shortfalls" in ACC entitlements. In practice the sentence has been misapplied and is a triple "lottery" for victims. Judicial misapplication of reparation has resulted in layering of compensation, facilitating double recovery. Reparation for "emotional harm" and "loss or damage consequential on [...] physical harm" was inserted to include victims of "real crime" in the sentencing process and provide them with more avenues to obtain compensation, but in practice reparation payments have disproportionately affected offenders under the Health and Safety at Work Act 2015 (HSWA). The purpose of this paper is to assess whether the sentences of reparation for "emotional harm" and "loss or damage consequential on [...] physical harm" should be retained in light of the conflict with ACC and recent HSWA cases.

## "Registering Public Fear: An Analysis of the New Zealand Child Sex Offender Government Agency Register"

*Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 12/2018*

**KRISTINA WHITE**, Victoria University of Wellington, Faculty of Law, Student/Alumni  
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Both in New Zealand and internationally, there has been an increase in protection measures for the avowed purpose of keeping children safe. The Child Protection (Child Sex Offender Government Agency Registration) Act 2016 was introduced in New Zealand in attempt to address the perceived risk posed by child sex offenders released back into the community. The Act establishes a Child Sex Offender Register that keeps an extensive range of personal information about offenders who have committed a qualifying offence. This paper critiques the efficacy and suitability of the Register, evaluating both why

the Register came about and how it will work in practice. The Register has a number of conceptual and operational problems, making it an ineffective policy to address the problem of child sexual offending in New Zealand.

## "Retiring into a Desired Future Economy: Superannuation's Role in Building It"

*Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 13/2018*

**MICHELLE TUSTIN**, Victoria University of Wellington, Faculty of Law, Student/Alumni  
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This paper discusses the regulatory frameworks of superannuation schemes from four jurisdictions; New Zealand, Australia, United Kingdom and United States. The regulatory infrastructures used by these four countries is broadly indicative of global trends in the superannuation regulation sphere. As such, all discussions in this paper can be applied to superannuation schemes throughout the world. It then analyses whether the regulations in place are sufficient to ensure that retail superannuation scheme providers exercise their discretion in investment in a manner consistent with the preferences and expectations of their scheme participants; the public. This issue arises because the treatment of superannuation funds in terms of investment strategies, policies and decisions effectively mirrors that of institutional schemes, whilst the class of investors are fundamentally different and therefore likely to have differing preferences and expectations. This paper looks to characteristics and factors present in superannuation scheme participants and concludes that neither regulation, nor industry practice are providing for the unique preferences and expectations of the public as scheme participants. Possible regulatory changes to facilitate this meeting of public needs is then discussed.

## "Regulating for Disruption: A Case Study of the Outer Space Law Reform"

*Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 14/2018*

**JAMES CHURCHILL**, Victoria University of Wellington, Faculty of Law, Student/Alumni  
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Technology is changing the world faster than ever before, and many conventional industries are at risk of being disrupted. If New Zealand wants to be successful in a changing environment, it needs to be prepared to facilitate more innovative and technologically intensive industries. This paper considers the law reform process that has sought to develop a framework for a commercial launch industry in New Zealand. By using this process as a case study, some broader insight is provided into how effective New Zealand's law reform process is at regulating for disruption. This paper begins by telling the story of Rocket Lab and Peter Beck in order to demonstrate why this reform was necessary. It then considers several discrete elements of the law reform process such as: the framing of the outer space reform, the incorporation of bilateral and multilateral treaties, regulation through contract and integration of the outer space reform within New Zealand's environmental law framework. This paper discusses some of the unique and innovative approaches that characterise this reform. It also criticises a few elements of New Zealand's law reform process and considers how they can be improved.

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## About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As

Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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