FOREWORD

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This issue of the New Zealand Journal of Public and International Law, as with previous issues, contains a number of articles interrogating contemporary issues in the public and international fields. The topics being investigated range broadly across fields as diverse as judicial procedure, international economic law, the criminal procedure protections in the New Zealand Bill of Rights Act 1990, the intersection between international law and common law administrative law principle, and justice systems in post-conflict jurisdictions.

The articles are headed by a public address from the Principal Family Court Judge, delivered as part of the New Zealand Centre for Public Law's Public Office Holders Seminar Series. Judge Peter Boshier reflects on the challenges that have faced the Family Court during his first four years as Principal Family Court Judge. With particular reference to the Family Court Matters Bill (since enacted), Judge Boshier discusses the measures that have been taken to respond to two key challenges: the perception of a lack of openness in the Family Court's procedures and the need to take a more child-inclusive approach. Looking ahead, he identifies delay and the problem of balancing a speedy, protective approach with the principles of natural justice as the main challenges for the future.

The dilemma posed by the "facts available" provisions in the World Trade Organization's Anti-Dumping Agreement, which enable investigating authorities to rely on information from alternative sources if the interested parties have not supply the required information, is explored by Michael Andrews. Though these provisions are necessary to deter uncooperative behaviour from the country under investigation, they open up the possibility of abuse from the investigating authorities. Andrews analyses proposed amendments to the "facts available" provisions to avoid or minimise such abuse. He considers that some limited amendments may be desirable, but concludes that ultimately the problem is not with the rules themselves but with the fact that some countries act in bad faith when applying them. He offers practical suggestions for some ways to promote best practice amongst WTO members in the application of the rules.

The focus of Amelia Evans' article is section 23(4) of the New Zealand Bill of Rights Act 1990 – the right of persons who have been arrested or detained under an enactment to refrain from making any statement. She examines the implications of this provision for persistent police questioning of a detainee in the face of an initial indication that the detainee wants to exercise his or her right not to answer questions. Does section 23(4) create a bright line rule that police must desist

from questioning in such circumstances, or is a more evaluative approach sufficient to protect the right? The Court of Appeal in *R v Ormsby* took the latter evaluative approach, but Evans argues that it did so on the basis of an incorrect reading of earlier case law. She also questions whether this evaluative method is consistent with a purposive approach to Bill of Rights interpretation and with the drafting history of section 23(4).

In an article based on a paper that won the 2007 Quentin-Baxter Prize for Public and International Law at Victoria University of Wellington, Arla Kerr considers the way in which New Zealand's international environmental obligations can be brought to bear on administrative decision-making. In her view, developments in related areas such as human rights law have not been brought across fully into the field of environmental law. Accordingly, there is significant untapped potential under all three of the traditional heads of judicial review (illegality, irrationality and procedural impropriety) for a more nuanced approach to the impact of international law on decision-making under, in particular, the Resource Management Act 1991 and the Fisheries Act 1996.

Finally, Natalie Pierce's article examines the experience of post-conflict jurisdictions that have adopted a dual approach to transitional justice, that is, where a truth commission has been established to promote reconciliation within the post-conflict society, while at the same time a judicial body has been established for the prosecution of those responsible for serious human rights abuses. She uses the case of Sierra Leone – to explore the experiences in Timor Leste and South Africa – for insights into the problems that can arise when the relationship between such transitional justice bodies is not properly defined. She concludes by identifying practical guidelines for avoiding jurisdictional clashes in future post-conflict societies.