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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Post-Legislative Scrutiny in New Zealand: Is a More Formal Mechanism Necessary?" 

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 32/2018

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This paper has considered what post-legislative scrutiny is and why it is necessary, and also considers New Zealand's approach to ex post evaluation. While this paper does not argue against the proposition that better post-legislative scrutiny is necessary in New Zealand, it does argue that better post-legislative scrutiny is not going to be achieved by introducing a formal review process which engages an independent review body and undertakes standardised review of all legislation. This paper considers that the focus should instead be on the post-legislative scrutiny processes that are already in place in New Zealand and how those can be strengthened. In particular the focus should be on providing better

guidance around the role of departments as regulatory stewards, creating better feedback loops between the ex ante and ex post stages of evaluation, and approaching regulatory management in an integrated way. This paper concludes that it is just not going to be politically feasible to introduce a formal and systematic approach to review when there are other, more cost effective measures that can be taken to improve post-legislative scrutiny in New Zealand.

"Te Ture Whenua Māori Reform – When Poor Problem Definition Leads to Illegitimate Policy"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 33/2018

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Achieving policy legitimacy is incredibly challenging. One key element includes input legitimacy which includes the early review stages that seek to define the problem the resulting policy will address. The recent proposed reform of the Te Ture Whenua Māori Act 1993 demonstrates the importance of problem definition in achieving policy legitimacy. In order to effectively define the problem in this case, an assessment of the Act was required to determine whether the regulatory framework and the Māori Land Court were inhibiting utilisation of Māori land. The Review Panel tasked with undertaking the review of the 1993 Act chose to rely on current research to design a policy that sought to address what it perceived as the barriers to utilisation of land, rather than determine whether the current framework was in fact inhibitory. This choice was the ultimate error and resulted in a policy perceived as illegitimate overall. The Panel effectively ignored history, relied disproportionately on poor quality evidence, and used this evidence incorrectly.

"Medicinal Cannabis in New Zealand: Addressing the Medicinal/Therapeutic Divide and Overcoming Barriers to Law Reform"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 34/2018

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Cannabis is classified as an illegal drug under the Misuse of Drugs Act 1975, with use, possession and cultivation illegal unless the requisite governmental approval is obtained. Despite recent regulatory changes, medicinal cannabis remains largely inaccessible, unaffordable and unavailable for ordinary New Zealanders under the current regime.

The central issue running through the medicinal cannabis debate is that individuals want to be able to use cannabis for a variety of health reasons, and not have it strictly controlled as a medicine. In exploring key arguments in favour of, and barriers to, law reform in this area, it is proposed that a wider definition of medicinal cannabis is required which encompasses therapeutic use. After demonstrating that perceived barriers blocking reform are able to be overcome, it is suggested that medicinal cannabis should be included within the upcoming governmental review of therapeutic substances. While it is unclear what shape this new regime may take, the inclusion of medicinal cannabis would allow for continued governmental oversight, alongside avoiding some of the complex processes involved in getting medicines approved and funded in New Zealand. Ultimately, if an individual is deriving a benefit from a relatively harmless, natural substance in a safe and controlled manner as an alternative to more harmful prescription drugs, they ought to be able to do so without fear of criminal repercussions.

"Reducing Biological Greenhouse Gas Emissions in New Zealand: A Climate Tool Without a Strategy"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 35/2018

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The problem posed by rising agricultural greenhouse gas emissions is one of the most wicked law reform problems facing New Zealand today. Agriculture is New Zealand's largest sector, and largest producer of greenhouse gas emissions, yet remains excluded from any policy mechanism targeted at climate change mitigation. Choosing a legislative response to address these emissions is critically important to New Zealand. However, what is more important is that the country creates a foundation in which a response can flourish and reform can succeed. This paper seeks to link the flaws in the law reform process to a flawed response for addressing biological emissions in New Zealand. By failing to build support and trust with industry, a solid evidence base, or a cross-party, cross-government framework, the government has confused a mechanism with a strategy and become locked into a

precedent of inaction. A uniquely New Zealand problem requires a uniquely New Zealand solution that involves starting the process by defining the goal and establishing a strategy and foundation to achieve that goal.

"The Impact of Incorrect Problem Identification on New Zealand Sign Language Reform"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 36/2018

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New Zealand Sign Language (NZSL) is the first language of the New Zealand Deaf community. The first attempts to protect the language were through the New Zealand Sign Language Act 2006 which officialised the language. The secondary purposes to promote and maintain the language have not been realised. The fundamental barrier to achieving effective reform around NZSL, is incorrect problem identification. The misunderstood identification issue stems from a perception of Deaf as disabled limiting the potential effectiveness of reform towards NZSL. This approach neglects to view the debate around New Zealand Sign Language as a prominent and fundamental issue linguistically and culturally. In doing so, language mechanisms are not utilised in situations where they otherwise might. This paper seeks to uncover the impact that the incorrect problem identification has had on New Zealand Sign Language both on the Deaf Community itself, as well as in relation to stages of the law reform process aimed at quality decision making. Reform through legislation or policy needs to be implemented to ensure the languages survival. This will not occur unless the issue is placed within a cultural linguistic framework recognising Deaf as a Culture and not as disabled. It is submitted that a national languages policy should be developed to guide and legitimise the sign language issue.

"Divorcing Rhetoric from Reality A Law Reform and Policy Perspective on Section 15 of the Property (Relationships) Act 1976"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 37/2018

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Section 15 of the Property (Relationships) Act 1976 was passed in 2001 as a substantial and controversial reform to New Zealand's relationship property regime. Despite the laudable ambition of remedying significant economic disparities between separating spouses, civil union and de facto couples through s 15, this has failed to materialise. Section 15 has introduced uncertainty and inconsistency into what is otherwise a clear, rules-based regime.

This paper provides a law reform perspective on how s 15 came to be an illustration of poor law reform. It argues the substance of the provision cannot be critiqued in the abstract, as the difficulties of s 15 are directly linked to deficiencies in its reform process. It unravels the procedural, conceptual and judicial challenges to this reform. Key players in s 15's reform were constrained by the political environment, and were required to make trade-offs to effect reform in the circumstances. Section 15's policy direction created conceptual tensions with the broader statutory scheme. The courts have struggled to play an effective role in the application and development of s 15 due to inadequate guidance and a reluctance to depart from the imbedded foundational principles of the Act. It is argued that these challenges to s 15 reveal broader impediments to law reform in New Zealand. Many of the identified challenges ought to be taken into consideration if s 15 is to be the subject of further reform in the future.

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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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