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## Announcements

Collected Papers by the Right Honourable Sir Geoffrey Palmer QC  
Part XV The New Zealand Legislative Process

The Palmer Series collects the papers of the Right Honourable Sir Geoffrey Palmer QC, Distinguished Fellow of the Victoria University of Wellington Law Faculty. The Palmer series is sponsored by an anonymous donor whom the Faculty gratefully acknowledges.

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

### "The Legislative Process and the Police"

*Neil Cameron and Warren Young (eds) 'Policing at the Cross Road' (Allen and Unwin, Wellington, 1986)*  
*Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 63/2015*

**SIR GEOFFREY PALMER QC**, Victoria University of Wellington - Faculty of Law  
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This paper is an edited version of a public lecture delivered in 1983 at Victoria University. The common coinage of the area of political debate regarding policing is simplicity. You are either for the police or against them. You are either in favour of law and order or you are a prophet of chaos and anarchy. The superstructure of political attitudes which is built symbolically around the 5500 New Zealand police officers is quite remarkable. It flows from the fact that policing, more than any other political issues, provides a convenient forum in which political adherence to the existing social order and a commitment to the maintenance of stability can be demonstrated. It becomes particularly significant at times when political and social upheavals seem to threaten the very fabric of society. Faced with the complexity of social change, the law and

order issue is appealing in its simplicity and in the way in which it can be used to demonstrate the basic values espoused by a particular politician, political party or group.

The political difficulty is to avoid such simplicities, stereotypes and knee-jerk reactions which surround the law and order issue. It is difficult to develop rational policy proposals or the debate such issues in Parliament in a way that avoids hysteria. The result is that Parliamentary scrutiny of police issues is low. The level of accountability to Parliament by the police for what they do is also low. Parliamentary debates on police issues seldom shed much light on things. Emotion and rhetoric are the prevailing characteristics. Debate is carried on at a very superficial level and debates over allocation of resources, the incidence of government cuts, or police policies leading to the closure of local police stations, zealously avoid discussion of the real issues and focus instead on simple issues of support for or opposition to police.

It is clear that there are important aspects of the legislative process which function more calmly, rationally and reasonably than do the general political debates in Parliament on police matters. What is also clear is that the role of the police in the legislative process is increasing – both quantitatively and qualitatively. Twenty years ago they had hardly any part in it at all. Today they are major participants in the process on all matters which are of importance to them. It is important to understand that the police themselves sponsor very little legislation. The responsibility for all the major criminal statutes and most other statutes of importance to the police is carried by the Justice Department. The only enactments for which the police have legislative and administrative responsibility are the Police Act 1958 and the Arms Act 1983. As regards these statutes alone, they initiate and carry legislative proposals. In all other areas of concern, they must seek to exert their influence with the sponsoring department at the pre-legislative drafting stage and with the various caucus, cabinet and parliamentary committees at the legislative stage. The Police Legal Section acts as a conduit between the police and Parliament. They carry the burden of the work done by the police on legislation most effectively.

The paper concludes that a) It would be desirable to state the functions of the New Zealand Police with clarity in a statute, as they are not currently legally defined; b) the level of public debate on police activities requires improvement; c) accountability of the police to Parliament should be improved; d) the police are important contributors to the legislative process on Bills of concern to them and the police view on a Bill ought always to be put before a select committee where it is relevant.

### **"The New Zealand Legislative Machine"**

17 *Victoria University of Wellington Law Review* 285, 1987

*Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 64/2015*

**SIR GEOFFREY PALMER QC**, Victoria University of Wellington - Faculty of Law

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In this article, the former Professor Palmer fills one of the gaps in the available descriptions of our system of government by providing a detailed account of how laws are made. As Deputy Prime Minister and Minister of Justice (and earlier Leader of the House) Geoffrey Palmer also indicates how the process has been altered in recent years, in part in the direction of making more deliberate what he referred to as the fastest law maker in the west. He evaluates that and indicates the next major step to be considered – the plain drafting of legislation.

The dance of legislation is intricate, requiring perseverance, stamina and a large degree of esoteric knowledge. The purpose of the process is not to provide an obstacle course for good ideas but to provide checks and balances and quality controls on the content of new legislation. This essay looks at the mechanics of the New Zealand legislative process and briefly considers what improvements could be made. In the single chamber Parliament of New Zealand, making law is no doubt simpler than in other countries. Nonetheless, it is extraordinarily complicated and consists of a complex interaction of each stage between a variety of institutions and personalities.

The paper discusses the legislative process and functions including the Cabinet Legislation Committee, the legislative programme, the Parliamentary Counsel Office, the Legislation Advisory Committee, Caucus, and the Bill in Parliament. It concludes by considering the increased opportunity to produce law which is properly scrutinised and likely to function effectively, arguing that the principle obstacle to the most thorough scrutiny of bills is the time and inclination of the members of Parliament. It also considers the drafting and form of publication of legislation, a matter yet to be comprehensively addressed in New Zealand. A great deal remains to be done in the areas of making the law as understandable and accessible as practical and making its expression and content as simple as practicable. This work would not only help the user of legislation to understand and act in accordance with the law, but would also ensure that those who propose and adopt the law are more likely to make a full informed decision about it.

### **"Lawyer as Lobbyist: The Role of Lawyers in Influencing and Managing Change"**

*New Zealand Law Journal*, p. 93, 1993

*Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 65/2015*

**SIR GEOFFREY PALMER QC**, Victoria University of Wellington - Faculty of Law

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In this article Professor Palmer emphasises the duty that lawyers have to understand the Parliamentary law-making process to be of help to their clients, and incidentally to help the Parliamentarians make better laws. Lawyers have to act for interest groups and to do so effectively they need to be more understanding of political and economic issues that affect the law-making processes; they need to be policy analysts, and they need to understand better the process of law drafting.

### **"Government and Advice: Reflections on the Wellington Policy-Making Culture"**

*Claudia Geiringer and Dean K. Knight (eds.) 'Seeing the World Whole - Essays in Honour of Sir Kenneth Keith' (Victoria*

**SIR GEOFFREY PALMER QC**, Victoria University of Wellington - Faculty of Law  
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The New Zealand government is required to have a policy on every subject at all times. Essentially, the executive government has two fundamental types of activity: developing policy and executing it. There are many different sources of policy, including those in the political system such as ministers, Cabinet, the public service and political parties,, and those outside the system such as royal commissions, the media and international law. It is important to bear in mind that the context within which policies are developed and the process is never the same from one policy to another. The New Zealand scene is not readily capable of systematic or authoritative description and analysis.

This paper suggests that New Zealand can and should do better in devising policy and implementing it. The policy advice and implementation system in New Zealand exhibits weaknesses that should be rectified. Greater emphasis is required on the conversion of policy into legislation. Bad law often results from bad policy, but bad law also frequently taints good policy because of poor legal and regulatory design. Both the executive and the Parliament seem at their weakest when attempting to address complex issues that cut across legal frameworks and individual portfolios, and which should engage the whole of government.

The paper evaluates where the problem with policy lies, finding that part of it is created by the disjunction between the policy process and the legal instrument choice. Inability to secure at a central level coherence and control over regulatory interventions shows the same characteristics: problems of design. Bad law and bad regulation go hand in hand. The vertical departmental structures in which policy is developed, and the relative insulation of such structures from horizontal whole-of-government factors, contribute to the issue, as does the lack of capacity for policy development within the public service. The focus of the paper is the details of how problems occur when policy ideas come to be converted into legal and regulatory instruments.

The author discusses in detail a number of matters, including problems of assessing the Crown's legal risk, the experience with the Legislation Advisory Committee Guidelines, the work of the Legislation Design Committee, and the work done by the Ministry of Economic Development on better methods of regulatory design and measuring in advance the impact of regulatory interventions. Developments in Parliament suggest the climate may be right to attempt to address the problems outlined in this essay. The first is the Regulations Review Committee's recent Inquiry into the Ongoing Requirement for Individual Regulations and their Impact. One of the report's recommendations is that a sunset regime for statutory regulations should be developed and introduced. The second development was the introduction of the Regulatory Responsibility Bill, aimed at improving parliamentary laws and regulations by specifying principles of responsible regulatory management.

Parliament could contribute more toward scrutinising legislative and regulatory proposals if it were given the tools to do the job. To successfully address the problems of legislative design, and regulatory design, the issues have to be engaged with earlier in the policy design process.

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## About this eJournal

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 Judicial 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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