

Symposium on the 2009 Report of the Regulatory Responsibility Taskforce and the Proposed Regulatory Responsibility Bill

Symposium 16 February 2010 9.00 am-4.00 pm
Victoria University of Wellington's Pipitea Campus

The Regulatory Responsibility Taskforce report, and its recommended Regulatory Responsibility Bill, propose major constitutional changes in the way legislation and regulations are promulgated in New Zealand. The Institute of Policy Studies is hosting a one-day symposium to advance public debate on the Bill. The morning session will cover, from a wide range of viewpoints, the legal and constitutional issues. In the afternoon session, critics of the neoliberal approach have been invited to reflect on alternative ways of improving the quality of legislation and regulation in New Zealand.

Programme

Key Legal and Constitutional Themes, Property Rights and "Takings"

9.00 am-12.30 pm Chair **Sir Geoffrey Palmer**

Professor Paul Rishworth, Faculty of Law, University of Auckland *A Second Bill of Rights for New Zealand?*

Tim Smith, Chapman Tripp *The Regulatory Responsibility Taskforce: a view from inside the room*

George Tanner QC, Law Commission *How Does the Proposed Bill Measure Up Against the Principles?*

Dr Richard Ekins, Faculty of Law, University of Auckland *Juridifying Lawmaking*

The Political Economy of Constitutional Reform and Deregulation

1.15 pm-4.00 pm Chair **Professor Jonathan Boston**

Professor Jane Kelsey, Faculty of Law, University of Auckland *The Regulatory Responsibility Act as Embedded Neoliberalism and its Contradictions*

Dr Bill Rosenberg, Council of Trade Unions *Overseas Investment: Myopic Deregulation*

Dr Geoff Bertram, Institute of Policy Studies, Victoria University of Wellington, *Deregulatory Irresponsibility? Unintended Consequences of Failing to Regulate*



To register to attend
email ips@vuw.ac.nz

There is no charge to attend

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The Regulatory Responsibility Taskforce report, and its recommended Regulatory Responsibility Bill, propose major constitutional changes in the way legislation and regulations are promulgated in New Zealand. Long advocated by neoliberals, the changes would make all legislative and regulatory initiatives subject to the litmus test of compatibility with six “principles of good legislation” which the Taskforce report considers “broadly accepted”, and would require the Courts to interpret all legislation “consistently with the specified principles if possible”.

The scope of the proposals is very broad, covering “all mechanisms by which public entities exercise a

legislative function [including] Acts of Parliament, as well as regulations, rules and other instruments made by the Executive Council, Ministers, public officials, or public entities.”

Under the suggested “principles” mandatory full compensation for any “taking of property” would be enshrined in New Zealand law; all legislation would be subjected to formal cost-benefit analysis; all official decisions that adversely affect any person or property would be subject to appeal to the Courts on the merits; and the compatibility of any legislation or regulation with the six principles would be subject to adjudication by the Courts.

The principles recommended by the Taskforce for inclusion in the RR Bill fall within six broad categories:

- (a) **Rule of law** – legislation should be clear and accessible, not adversely affect rights, or impose obligations retrospectively, treat people equally before the law, and resolve issues of legal right and liability by application of law, rather than the exercise of administrative discretion;
- (b) **Liberties** – legislation should not diminish a person’s liberty, personal security, freedom of choice or action, or rights to own, use or dispose of property, except as necessary to provide for any such liberty, freedom or right of another person;
- (c) **Taking of property** – legislation should not take or impair, or authorise the taking or impairment of, property, without the consent of the owner, unless it is necessary in the public interest and full compensation is provided to the owner, such compensation to be provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment;
- (d) **Taxes and charges** – legislation should not impose, or authorise the imposition of, taxes, except by or under an Act, nor should it impose or authorise charges that exceed the reasonable cost of providing the goods or services, or the benefit that payers are likely to obtain;
- (e) **Role of Courts** – legislation should preserve the Courts’ role of authoritatively determining the meaning of legislation, and where legislation authorises a public entity to make decisions that may adversely affect any person or property, it should state appropriate criteria for making those decisions, and provide a right of appeal on the merits against those decisions to a Court or other independent body;
- (f) **Good law making** – legislation should not be made unless those likely to be affected by the legislation have been consulted and there has been a careful evaluation of the need for legislation to address the issue concerned. Furthermore the benefits of any legislation should outweigh its costs, and any legislation should be the most effective, efficient and proportionate response to the issue available.

Speakers

Paul Rishworth is Professor of Law at the University of Auckland and currently Dean of the Faculty. He is also convenor of the NZLS Law Reform Committee. His research interests are in the field of public law and human rights and he is the co-author of Rishworth et al, *The New Zealand Bill of Rights* (OUP, 2003).

Tim Smith is a senior solicitor at Chapman Tripp, specialising in litigation and dispute resolution. Tim provided support to the Regulatory Responsibility Taskforce and assisted in the preparation of its report.

George Tanner has been a law lecturer and has worked in private legal practice. He was a Crown Counsel in the Crown Law Office before appointment in 1981 as a Parliamentary Counsel. He was Chief Parliamentary Counsel from 1996 to 2007. He has drafted legislation in the company, securities, banking, insurance and other commercial law areas as well as legislation relating to housing, courts, and social welfare. He drafted much of the legislation related to the corporatisation and privatisation of State corporations and businesses in the 1980s and

1990s. He was a member of the Council of the Commonwealth Association of Legislative Counsel for 11 years representing New Zealand and the Pacific. He is a member of the Legislation Advisory Committee and an adviser to the Legislation Design Committee. He was appointed a Queen’s Counsel in 2002. He is currently a Law Commissioner

Richard Ekins is a Senior Lecturer in the Faculty of Law at the University of Auckland, where he teaches Jurisprudence and Statute Law. He recently completed his doctorate in legal philosophy at Balliol College, Oxford. He was the joint winner of the Herbert Hart Prize for Jurisprudence & Political Theory in 2004 and winner of the Australian Society for Legal Philosophy Essay Prize in 2005. He works in legal and political philosophy and constitutional law and theory.

Professor Jane Kelsey teaches in law and policy and international economic regulation at the University of Auckland. For the past decade she has been working on neoliberal globalisation, in particular trade in services and investment

agreements. Her latest book *Serving Whose Interests? The Political Economy of Trade in Services Agreements* was published by Routledge UK in July 2008. She has a Marsden grant for a project entitled: *New Zealand’s embedded neoliberalism is a post-neoliberal era that revisits The New Zealand Experiment 25 years on, in the context of a crisis in global capitalism.*

Bill Rosenberg is Economist and Director of Policy at the NZ Council of Trade Unions. He was previously Deputy Director of the University Centre for Teaching and Learning at the University of Canterbury, a Member of the Institute of Directors, a Commissioner on the Tertiary Education Commission, and active in the Campaign Against Foreign Control of Aotearoa.

Geoff Bertram is Senior Associate at the Institute of Policy Studies. He was formerly Senior Lecturer in the School of Economics and Finance at Victoria University. He has written studies of New Zealand regulatory practice in relation to electricity, gas, ports, airports and telecommunications.