FOREWORD

Rt Hon Sir Ivor Richardson, PC
President of the Court of Appeal

The application of legal rules often requires understanding of the underlying public policies. The development of the common law depends on what analogies are used and on the assessment of the values involved. Statutory interpretation requires consideration of the public policies which the legislation serves. The acceptable resolution of disputes involves reaching a satisfactory substantive answer in a fair and cost-efficient way. That requires balancing community values (moral, social and political), fairness considerations and the efficient use of society's limited resources.

As lawyers, we have tended to make largely intuitive assessments of public interest considerations. Our court processes do not readily lend themselves to the development of public policy in the systematic way that is regarded as desirable elsewhere in government. They stand in stark contrast, for example, to the generic tax policy process adopted in 1993. Protocols apply between the Ministers and between the Chief Executives of the 2 policy departments, Treasury and Inland Revenue. The generic tax policy process is a 16 step process divided into what are termed strategic phases, tactical phases, operational phases, legislative phases and implementation and review phases. It has 3 main objectives: to encourage earlier, explicit consideration of key policy elements and trade-offs; to allow for substantial external input in order to increase transparency and to provide for greater contestability and quality of policy advice; and to clarify the responsibilities and accountabilities of participants in the process.

Public policy development conventionally requires the identification and consideration of key policy elements; appropriate consultation and assessment throughout the processes; and cost benefit analyses during the various phases of the policy development program. Those analyses should assess all the costs and benefits, including the contribution of the particular policy to the achievement of community goals, and should recognise implementation constraints. And while efficiency concerns are only one factor in an assessment of the public interest we need to appreciate the economic costs of less efficient solutions. Finally, empirical analysis and testing provide valuable confirmation of theoretical assumptions.

For those reasons I applaud the developing interest in this country in law and economics in which the Law and Economics Association of New Zealand has played a significant

role. This special issue of the Victoria University of Wellington Law Review brings together an excellent set of papers. The lead article by Professor Susan Rose-Ackerman, a very distinguished American law and economics scholar, demonstrates how, to use her words, economics can enrich the arguments of anyone interested in political theory and social policy. Her paper also brings home the need to study procedural and institutional questions along with legal problems in order to produce results that are substantively justifiable and democratically legitimate. The other articles in this special issue cover a range of topics. Each is important in its own right. Each provides significant and fresh insights. It would be invidious to single out particular points made by particular authors. Clearly the courts and others concerned with the functioning of the legal system will benefit from the analyses and arguments which they develop. As Dr Barker notes at the conclusion of the last paper in the series, noble and clear objectives are not all that is needed for a government to perform well: a clear understanding of the nature and effects of its policy instruments and of the potential and the limitations of both private arrangement and central control is also required.

I welcome and commend this special issue of the Review.

Court of Appeal
Wellington