

## Environmental Law in New Zealand

(General Editors **Peter Salmon** and **David Grinlinton**,  
Thomson Reuters, 2015)

As one of the world's most creative and fascinating jurisdictions for the practice of environmental law, New Zealand is unsurprisingly home to some important scholarship in this field.<sup>1</sup> It is apparently the first country to enshrine a variation of the notion of sustainable development in its legislation as a national goal. The Resource Management Act 1991 (RMA), which consolidated and modernised many of New Zealand's disparate environmental laws into one super statute, obliges decision-makers to promote the goal of "sustainable management" of the country's natural resources, along with obligations to consider cognate "matters of national importance" (eg, relationship of Māori with their ancestral environments), and the need to "have particular regard" to various enumerated values including an "ethic of stewardship" and the "intrinsic value of ecosystems".<sup>2</sup> The New Zealand legislation has been widely acclaimed for its visionary path, and has inspired reforms in other jurisdictions, including my own – Tasmania.<sup>3</sup> On the other hand, the RMA has attracted significant criticism from some quarters, especially the business community, for being overly time-consuming and expensive to administer and is perceived by some as a major impediment to economic activity, with these concerns leading to periodic amendments of the legislation.<sup>4</sup> It has also sometimes been difficult to translate the RMA's ambitious provisions into practical, day-to-day rules and standards.

Given New Zealand's rich and interesting history of environmental law, and nearly a quarter-century since the lodestar RMA was enacted, it is timely to receive an important new addition to this literature with the recently published *Environmental Law in New Zealand*. It is a massive tome of well over 1000 pages featuring contributions from many of the leading thinkers of New Zealand environmental law. Edited by the Hon Peter Salmon QC, former High Court Judge, and David Grinlinton, an Associate Professor of the University of Auckland, this book provides such a comprehensive coverage of the state of the law and nuanced

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<sup>1</sup> For example, Klaus Bosselmann *The Principle of Sustainability: Transforming Law and Practice* (Ashgate, 2008); Simon Reeves *Environmental Law in New Zealand* (Wolters Kluwer, 2011); Derek Nolan *Environmental and Resource Management Law* (5th ed, LexisNexis NZ, 2014); Ceri Warnock and Maree Baker-Galloway *Focus on Resource Management Law* (LexisNexis, 2014). The New Zealand Journal of Environmental Law also makes an important scholarly contribution.

<sup>2</sup> Resource Management Act 1991, ss 5–8.

<sup>3</sup> Owen Furuseth and Chris Cocklin "Institutional Framework for Sustainable Resource Management: The New Zealand Model" (1995) 35 *Natural Resources Journal* 243.

<sup>4</sup> See, Owen McShane *A 'Think Piece' on Land Use Control under the RMA* (Ministry for the Environment, 1998).

analysis of many of its topical issues and challenges that will surely enable the book to become the leading handbook for a wide array of readers from novice students to seasoned scholars and practitioners.

The book is organised into 19 chapters that are sequenced logically. The first four chapters distil broad conceptual issues, contexts and historical developments. The next cluster of six chapters address mainly institutional issues (eg, central and local governments) and related bodies of law (eg, common law, administrative law and Māori legal issues). The final nine chapters analyse a variety of specific and technical issues such as water management, air pollution and heritage protection. There is little cross-referencing between the chapters, so that each can be read as an independent work. The book is supported by a comprehensive index, and several tables of statutes, regulations and cases, which together enable readers to navigate easily through the dense collection of material.

As one would expect of an edited volume of this huge size and scope, featuring 13 contributors, there is no consistent theme or thesis through it beyond a shared subject matter and an emphasis on taking stock of developments. On the one hand, some contributions offer a quite critical and conceptual perspective, such as those from Klaus Bosselmann and Prue Taylor, who respectively analyse the philosophy of sustainability and the role of international environmental law in shaping New Zealand environmental law. Conversely, other chapters offer a more doctrinal or practical approach to the subject matter, as evident in those authored by Brian Gordon (heritage protection) and Kathryn Edmunds (regulatory structures).

While this review does not give scope to comment on all the individual chapters, some are worth noting. Ceri Warnock, a Senior Lecturer at the University of Otago, contributed three important chapters. Her analysis of atmospheric pollution provides an excellent account of New Zealand's steps and struggles to regulate greenhouse gas emissions including its emissions trading scheme that other countries (eg, Australia) have failed to emulate. David Grinlinton himself contributed four of the five opening chapters, where he masterfully articulates the nature and boundaries of environmental law and its guiding philosophy. Among the most richly referenced chapters of the entire volume, his contributions demonstrate a sophisticated, interdisciplinary command of the literature and the enduring challenges to define the essence and purpose of environmental law. So too, the three chapters from Trevor Daya-Winterbottom (University of Waikato) are particularly good, covering water and marine law, and the administrative law context. His analysis of the latter issue is significant for highlighting that environmental law is just as much about process and procedure (eg, public participation and access to justice) as it is about substantive environmental outcomes (eg, healthy rivers). Nicola Wheen (University of Otago) makes a worthwhile contribution on biodiversity conservation law, a subject that is arguably the most tragic in New Zealand's environmental history given the massive loss of avifauna. Her chapter correctly reminds us of the "limitations

of the species approach” and the need to conserve biodiversity on a landscape or ecosystem-scale. The section on Antarctica in her chapter also highlights the valuable role that New Zealand plays in conserving part of the planet’s last true wilderness.

Although *Environmental Law in New Zealand* offers the best overview of the current subject matter, some readers will find it necessary to go beyond this book for additional information on some related areas of law or for alternative disciplinary insights. These areas include mining and energy law, which are not covered in any dedicated chapters (though occasionally acknowledged within chapters) – a surprising omission, given that the volume’s co-editor David Grinlinton is arguably New Zealand’s leading scholar of these subjects. A further omission is in regard to some of the emerging, cognate areas of environmental governance such as corporate environmental responsibility and the influence of business law on environmental behaviour. In regard to the conceptual framing of the volume, it would also have benefited from more non-legal perspectives, such as analysis of the ongoing politics of RMA reform.

Furthermore, the book does not shed much insight into the future of New Zealand environmental law, including how it should be developed and modernised in the coming decades. Although individual chapters occasionally remark about this agenda (eg, as Grinlinton does in the conclusion of his fourth chapter), the book as a whole would have benefitted considerably from a closing chapter that synthesised how the contributors collectively see the road ahead for environmental law and the impediments and opportunities to its advancement. New Zealand, as for all other countries, has yet to seriously regulate or control the underlying drivers of environmental decline – primarily population growth, economic development, consumption patterns and technological change. These drivers remain largely uninhibited, and indeed are very difficult targets for environmental governance because their incremental and cumulative impacts tend to manifest only slowly and subtly. The continuing decline in ecological health and biodiversity around the world must cause us to question whether the sustainability paradigm remains valid as the guiding light of environmental law.<sup>5</sup> Rival concepts such as “wild law” and “re-wilding” are starting to challenge it, and how they might shape New Zealand’s future environmental law would have been among the interesting themes worth exploring in a closing chapter.<sup>6</sup>

Then again, as a volume of 1135 pages, it is perhaps not surprising that the editors and the publisher had to draw the line somewhere on what to include and exclude. Overall, I highly recommend *Environmental Law in New Zealand* to both local and foreign readers. Few scholars

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<sup>5</sup> See generally, Melinda Benson and Robin Craig “The End of Sustainability” (2014) 27 *Society & Natural Resources* 777.

<sup>6</sup> Peter Burdon (ed) *Exploring Wild Law* (Wakefield Press, 2011); Benjamin J Richardson “Reclaiming Nature: Eco-restoration of Liminal Spaces” (2015) *Australian Journal of Environmental Law* (forthcoming).

today are “brave” enough to endure the often thankless task of writing, managing and editing a tome of such size and scope. The literature on environmental law will benefit considerably from the outstanding efforts of Peter Salmon and David Grinlinton to provide this broad compendium of developments in one of the world’s most progressive jurisdictions for environmental law. Their efforts will help ensure that other countries do not lose sight of Aotearoa’s innovations in environmental law practice and scholarship.

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