

Book Review

Peter Salmon and David Grinlinton (eds)

***Environmental Law in New Zealand*
(Thomson Reuters, 2015)**

Dr Royden Somerville QC*

Environmental law is a challenging and diverse field of law which is expertly addressed in the recently published textbook *Environmental Law in New Zealand*. This book is commended as an invaluable resource for those involved with the development and application of environmental law and policy in New Zealand. It could be referred to with confidence in the specialist Environment Court and superior courts.

Those practising and making decisions in the field of environmental law are confronted with: the wide scope of the law; value-laden issues; private and public law principles; the influence of international law; the development of a New Zealand jurisprudence which incorporates tikanga Māori; reasoning approaches centred on sustainability in decision-making which focus on the future and the obligation not to unfairly disadvantage future generations by over-exploitation of natural resources and irreversible environmental impacts from human activity; managing the challenges of significant global environmental risks; and the need for reflexive and sophisticated approaches, in the face of uncertainty when developing policy and planning instruments which are justiciable.

Those appearing in the Environment Court and the superior courts promoting the development of a distinctive New Zealand environmental and resource management jurisprudence will be greatly assisted by this well-written text. It is a coherent and comprehensive book that explains the basis of environmental law in New Zealand, and then addresses discrete topics to inform those endeavouring to interpret and apply the law as practitioners or decision-makers. Its strength lies in the level of analysis concerning the scope and exposition of environmental law centred around 226 statutes, common

*Barrister's Chambers, Dunedin.

law principles, international law, the Treaty of Waitangi, and central and local government policy and planning instruments. It is 1,135 pages long, with 19 chapters written by 12 authors who are leading scholars and lawyers. With their considerable experience and expertise they present the law in a way that will benefit academics, members of the judiciary, policy analysts, practitioners and students involved in study, development, implementation and decision-making in this rapidly evolving field of law. There is inevitably repetition of themes and references to cases and statutory provisions in chapters which deal with specific subjects. However, the use of an introductory section in each chapter assists the reader to understand what will be covered, the link with other chapters, and why the subject matter has been addressed in a particular way.

The text is very well-structured and wide-ranging. This is demonstrated by the chapter headings: Defining the Nature and Boundaries of Environmental Law; The Context of Environmental Law; Sustainability and the Law; Sustainability in New Zealand Environmental Law and Policy; The Role of the Common Law; The Role of Administrative Law; The Relevance of International Environmental Law for Domestic Law; Treaty of Waitangi and Māori Issues in Environmental Law; Institutional and Governance Structures of Environmental Law; Regulatory and Instrumental Structure of Environmental Law; The Resource Management Act 1991; Land Use; Water Management; Protection of the Coastal and Marine Environment; Global Atmospheric Pollution: Climate Change and Ozone; Air Pollution in New Zealand; The Protection and Conservation of Ecosystems and Species; Heritage Protection; and Compliance and Enforcement. However, it would have been useful to have a separate chapter on onshore and offshore mining because of the spread of references to mining laws throughout the book.

The insightful and informative foreword by the Chief Justice, the Rt Hon Dame Sian Elias, the preface by the Hon Peter Salmon QC, and chapters one and two which describe the scope and context of environmental law in New Zealand by Salmon's fellow editor, Associate Professor David Grinlinton, provide the mapping and platform for the wide canvas of environmental law in New Zealand. Grinlinton describes the subject of environmental law as follows:¹

Environmental law as a discrete subject in its own right is now widely accepted. Its pervasive nature underlying all aspects of human existence within, and interactions with, the natural environment make it a unique category of legal discipline. Further, its broad reach, which encompasses elements of private law, public law and regulation make it very difficult to define with

¹ Peter Salmon and David Grinlinton (eds) *Environmental Law in New Zealand* (Thomson Reuters, New Zealand, 2015) at 22.

the relative precision that is possible with other common law subject areas. Nevertheless, it is hoped that this brief discussion provides a strong argument that environmental law, as a discrete legal discipline in its own right, has at least as much — if not more — historical, philosophical and jurisprudential justification as any of the traditional legal subject areas.

The significant growth of international environmental law since the United Nations Conference on the Human Environment in Stockholm in 1972 has had a major influence on the development of environmental law and policy in New Zealand. International law's proportional and precautionary responses to global environmental risks, which include impacts on freshwater, biodiversity, climate and the marine environment, are highly relevant. The inextricable link between progressing social, economic and cultural wellbeing, and the use of natural resources, is central to any consideration of sustainability and environmental justice. A systematic approach to resource management based on the principle of sustainability is contained in the Resource Management Act 1991 (the RMA or the Act), and understandably its provisions receive the greatest attention in the book. With a need to consider facts, predictions and value judgements, decision-makers, and particularly the specialist Environment Court, face challenges involved with providing for consistent and principled reasoning when applying the provisions of the RMA. The way in which the Environment Court and superior courts have interpreted and applied the provisions of the RMA and other environmental statutes is found from chapter 11 onwards.

There is a very useful description in the book of relevant common law principles involving private rights, the way decision-makers exercise value-laden discretionary powers pursuant to administrative law principles, and the significance of public law principles because of the importance of the public interest in the use of natural resources and the environment. There is also a very helpful treatment of the importance of the Treaty of Waitangi and Māori issues, and the mandatory duty of decision-makers to address these matters in Part 2 of the Act, which provides a central plank for the development of a distinctive jurisprudence which marks the multi-faceted body of environmental law in New Zealand.

Authors address in detail the governance and regulatory framework within the RMA. The Environment Court is one of the few courts that has referred to it on appeal, process and substantive issues involving the development and implementation of local government policy and planning instruments, which form subordinate legislation. The Court needs to have information presented to it that can be evaluated using methods involved with developing policy and planning instruments, such as cost-benefit analyses, risk-benefit analyses and risk management approaches. The role of central and local government in developing policies and plans, and local government's consideration of

applications for resource consents, and its involvement in the designation of land, have been explained in detail. References to law reform projects and announced proposed policy changes relating to the RMA are mentioned in the book and help relate it to contemporary environmental law and policy concerns.

The recently released report *New Zealand's Environmental Reporting Series: Environment Aotearoa 2015* provides information on five environmental "domains": air, atmosphere and climate, freshwater, land, and marine. Biodiversity is also included as a cross-domain theme. In this book these domains are addressed in depth in the context of the relevant law. This is a particular strength of this significant textbook. Also, heritage protection and environmental compliance and enforcement are covered fully in the concluding chapters.

The editors and authors deserve congratulations for producing an excellent textbook which is an important and informative resource addressing the stimulating subject of environmental law in New Zealand.