



Essential Readings in Environmental Law
IUCN Academy of Environmental Law (www.iucnael.org)

ENVIRONMENTAL LAW IN NEW ZEALAND

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OVERVIEW OF KEY SCHOLARSHIPS

General

1. Nolan, D. (ed), *Environmental & Resource Management Law* (4th ed LexisNexis, 2011)
2. Bosselman, K., D. Grinlinton, , and P. Taylor, (eds) *Environmental Law for a Sustainable Society* (2nd ed. New Zealand Centre for Environmental Law, 2013)
3. Daya-Winterbottom, T. (ed), *Frontiers of Resource Management Law* (Thomson Reuters, 2012)

Crosscutting themes

4. Bosselmann, K., and B.J. Richardson, (eds), *Environmental Justice and Market Mechanisms: Key Challenges for Environmental Law and Policy* (Kluwer Law, 1999)
5. Grinlinton, D., and P. Taylor, P. (eds), *Property Rights and Sustainability The Evolution of Property Rights to Meet Ecological Challenges* (Martinus Nijhoff, 2011)

Specific issues

6. Daya-Winterbottom, T. (ed), *The Salmon Lectures – Justice and the Environment* (1st ed Resource Management Law Association, 2007)
7. Daya-Winterbottom, T. (ed), *The Salmon Lectures – Justice and the Environment* (2nd ed Thomson Reuters, 2012)

Contentious issues

8. Bosselmann, K., J. Fuller, and J. Salinger (eds), *Climate Change in New Zealand: Scientific and Legal Assessments* (New Zealand Centre for Environmental Law, 2002)
9. Cameron, A. (ed), *Climate Change Law and Policy in New Zealand* (LexisNexis, 2011)
10. Bosselmann, K., and V. Tava, *Water Rights and Sustainability* (New Zealand Centre for Environmental Law, 2011)

11. Palmer, K., "Environmental Management of Oil and Gas Activities in the Exclusive Economic Zone and Continental Shelf of New Zealand" *Journal of Energy & Natural Resources Law* Vol 31 No 2 2013 123

Background

Environmental law in New Zealand is primarily statute based with approximately 40 statutes being concerned with the environment. The relevant statutes are listed in the schedules of the *Environment Act* 1986 and the *Conservation Act* 1987. The former statute established the Ministry for the Environment and the office of the Parliamentary Commissioner for the Environment, and the latter statute established the Department of Conservation that is responsible for administering one-third of New Zealand's land surface that is set aside as protected natural areas. The principal environmental statute is the *Resource Management Act* 1991 (RMA) which restated and reformed the law regarding the use of land, air and water. The New Zealand Environment Court (originally established as an appeal board under the *Town and Country Planning Act* 1953) was continued under the RMA as a specialist environmental court exercising appellate and civil and criminal law jurisdiction under the RMA and certain other statutes (e.g. civil enforcement jurisdiction under the *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act* 2012). While arguments about whether the RMA should be regarded as an environmental "one stop shop" were vigorously debated during the mid-1990's, the continued existence of the broad corpus of other statutes governing aspects of the New Zealand environment, and the subsequent enactment of other environmental statutes laid this particular ghost to rest - e.g. *Hazardous Substances and New Organisms Act* 1996, *Climate Change Response Act* 2002 and *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act* 2012. Similar to the position in other countries, environmental law is a "hot" topic and the law continues to be the subject of almost ongoing statutory reform, and jurisprudence from the New Zealand Supreme Court is now beginning to have an effect on the development of environmental law. To date the Supreme Court has delivered 8 leading environmental law judgements following its establishment in 2004, with the 4 most recent decisions being issued in 2013-2014.

General

Scholarly research regarding environmental law in New Zealand is primarily published in the format of refereed law journal articles and conference proceedings. There is currently only one published treatise, together with a small number of monographs published by the New Zealand Centre for Environmental Law and the Resource Management Law Association of New Zealand regarding this area of law.

1. The book by **D. Nolan**, *Environmental & Resource Management Law* is currently the only legal treatise on environmental law published in New Zealand. Authored by a team of academics, legal practitioners, and judges, the book is intended primarily for legal practitioners, the book also covers the same ground as environmental law courses taught in New Zealand universities.
2. The monograph by **K. Bosselman**, **D. Grinlinton** and **P. Taylor**, *Environmental Law for a Sustainable Society*, examines the development and key features of environmental law in New Zealand in its global context. It

focuses on contemporary environmental law, and emerging legal scholarship about sustainable development.

3. **T. Daya-Winterbottom's *Frontiers of Resource Management Law*** brings together a collection of world-leading writing on environmental law from academics, judges, legislators, and practitioners. Originally presented as keynote and plenary session papers at the annual conferences convened by the Resource Management Law Association of New Zealand during the period 1993-2011, this collection of scholarly papers charts the significant developments in New Zealand environmental law and practice. From an international, comparative, and transnational perspective this collection of papers also demonstrates the important role played by environmental law associations as catalysts for new multi-disciplinary thinking about challenging environmental issues.

Crosscutting themes

New Zealand environmental law has been dominated by three major crosscutting themes, namely, the use of market mechanisms, the role of property rights, and indigenous issues. They are represented by publication of selected papers from international environmental law conferences held in New Zealand that have played a critical role in providing a catalyst for informed debate by the academy, the courts, and the legal profession. Selected papers from the IUCN Academy of Environmental Law Colloquium 2013 held at the University of Waikato will be published in 2015.

4. The book titled *Environmental Justice and Market Mechanisms: Key Challenges for Environmental Law and Policy*, edited by **K. Bosselmann** and **B. J. Richardson** brings together selected papers from the first international environmental law conference held in New Zealand. It focuses on ethical and legal considerations of trade and the environment; and the use of market mechanisms in particular jurisdictions and in relation to pollution control and natural resources.
5. The book by **D. Grinlinton** and **P. Taylor**, *Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges*, brings together selected papers from the second international environmental law conference held in New Zealand. It goes beyond the traditional critique of liberal property theories and takes on the challenge of reconceptualising property rights and systems, and provides a longer-term ecological perspective on the integrity and viability of legal structures for the health of the planet.

Specific issues

The annual Salmon Lecture established by the Resource Management Law Association of New Zealand in 2002 has provided an important vehicle for scholarly debate about specific issues by academics, lawyers, judges, and public officials.

6. In *The Salmon Lectures – Justice and the Environment*, by **T. Daya-Winterbottom** brings together the Salmon Lectures 2002-2006 that provide critical scholarly insights about sustainable development as a guiding ethic, the role of public participation in preparing legislation and policy regarding

the uses of genetically modified organisms, the role of restorative justice in environmental prosecutions, the allocation of natural resources, and the role of indigenous people in resource management.

7. In a second monograph with the same title, *The Salmon Lectures – Justice and the Environment*, **T. Daya-Winterbottom** brings together the Salmon Lectures 2007-2011 that provide important scholarly insights about sustainability, human rights and the environment, oceans governance and marine living resources, and the role of scientific evidence and the precautionary principle in resolving environmental disputes.

Contentious issues

Climate change, fresh water allocation and quality, and avoiding the adverse effects of mining and oil and gas exploration and exploitation in the exclusive economic zone and continental shelf continue to be contentious and litigious issues. They have been critically analysed in published monographs and refereed journal articles.

8. **K. Bosselmann, J. Fuller and J. Salinger**, in *Climate Change in New Zealand: Scientific and Legal Assessments*, brings together legal and scientific scholarship reflecting on proposed options for providing effective climate change policy, and the role of local government in relation to climate change. It focuses on the available scientific assessments and the range of potential economic and regulatory instruments. It charts the development of New Zealand law in the lead up to the enactment of the *Climate Change Response Act 2002*.
9. In *Climate Change Law and Policy in New Zealand*, **A. Cameron** presents the international and scientific background to the development and introduction of the New Zealand Emissions Trading Scheme in 2008 and its subsequent implementation.
10. **K. Bosselmann and V. Tava's** book titled *Water Rights and Sustainability* looks at water in lakes and rivers, the coastal marine environment, and in the sewage stream. It provides a critical scholarly analysis of property rights in relation to water, and possible market approaches to this common resource. It addresses the range of regulatory and economic instruments that are available to sustainably manage water resources, and the potential assertion of native title to water.
11. **K. Palmer's Environmental Management of Oil and Gas Activities in the Exclusive Economic Zone and Continental Shelf of New Zealand**, considers New Zealand's experience regarding deep-sea oil and gas exploration and mining, international obligations under UNCLOS, and the legal regime under the *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012*.

FURTHER RECOMMENDED READINGS AND RESEARCH SOURCES

Websites

Centre for Energy Resources and Environmental Law (CEREL) www.waikato.ac.nz
Department of Conservation (DOC) www.doc.govt.nz
Environmental Defence Society (EDS) www.eds.org.nz
Environmental Protection Authority (EPA) www.epa.govt.nz
Ministry for the Environment (MFE) www.mfe.govt.nz
New Zealand Centre for Environmental Law (NZCEL) www.auckland.ac.nz
New Zealand Planning Institute (NZPI) www.nzpi.org.nz
Parliamentary Commissioner for the Environment (PCE) www.pce.govt.nz
Quality Planning Website (QP) www.qualityplanning.org.nz
Resource Management Law Association (RMLA) www.rmla.org.nz
Royal Forest and Bird Protection Society (RFBP) www.forestandbird.org.nz

Specialist journals and law reports

Environmental Law Reports of New Zealand (Thomson Reuters)
New Zealand Journal of Environmental Law (NZCEL)
New Zealand Resource Management Appeals (LexisNexis)
Planning Quarterly (NZPI)
Resource Management Bulletin (LexisNexis)
Resource Management Journal (RMLA)
Resource Management Theory & Practice (RMLA)

Representative scholarly literature

Bosselmann, K., *When Two Worlds Collide: Society and Ecology* (RSVP 1995)
Buhrs T. and RV. Bartlett *Environmental Policy in New Zealand: The Politics and the Clean and Green?* (Oxford University Press 1993)
Caldwell, J., *An Ecological Approach to Environmental Law* (Legal Research Foundation 1988)
Gillespie, A., *International Environmental Law, Policy and Ethics* (OUP 1997)
Gillespie, A., *The Illusion of Progress* (Earthscan 2001)
Glazebrook, S., "Human Rights and the Environment" (2009) 40 VUWLR 293
Harris, B.V., "Sustainable Management as an Express Purpose of Environmental Legislation: The New Zealand Attempt" (1993) 8 Otago LR 51
Hawke, G. (ed), *Guardians for the Environment* (Institute of Policy Studies 1997)
Kerckin, S., "Sustainability and the Resource Management Act 1991" (1993) 7 Auckland U L Rev 290
McLean, J., "New Zealand's Resource Management Act 1991: Process with Purpose?" (1992) 7 Otago LR 538
Memon, A., *Keeping New Zealand Green: Recent Environmental Reforms* (Otago University Press 1993)
Palmer, G., *Environment The International Challenge* (Victoria University Press 1995)
Pardy, B., "Sustainability: an ecological definition for the Resource Management Act 1991" (1993) 15 NZULR 351
Park, G., *Nga Uruora – The Groves of Life Ecology and History in a New Zealand Landscape* (Victoria University Press 1995)
Ruru, J., J. Stephenson and M. Abbott (eds), *Beyond the scene: landscape and identity in Aotearoa New Zealand* (Otago University Press 2010)

Ruru, J., J. Stephenson and M. Abbott (eds), *Making our place: exploring land-use tensions in Aotearoa New Zealand* (Otago University Press 2011)

Smith, A. and G. Taylor, *Conservation in New Zealand* (Environmental Defence Society 1985)

Taylor, P., *An Ecological Approach to International Law* (Routledge 1998)

Upton, S.D., "Purpose and Principle in the Resource Management Act" (1995) 3 *Waikato Law Review* 17

Young, D. *Keeper of the long view: Sustainability and the PCE* (Parliamentary Commissioner for the Environment 2007)