

BOOK REVIEWS

ENVIRONMENTAL LAW — by D A R Williams, LLB(Auck), LLM (Harv), Barrister and Solicitor of the High Court of New Zealand. Wellington. Butterworths, 1980. 330pp. Price NZ\$39.95.

The declared purpose of Mr D A R Williams when writing his book *Environmental Law* is found on page 2 where he states:

The modest purpose of this book is to introduce practising lawyers and law students to basic principles and practice in this comparatively new field and to articulate the proposition that environmental problems may often require novel and imaginative applications of established legal principles, the re-examination of existing laws to determine their ecological impact, and the introduction of sound legislative innovations.

This text is long overdue in New Zealand and both practical lawyers and students should find it an invaluable guide when grappling with the vexed interrelationship of common law principles and statutory provisions in the field of environmental law.

This book is timely for many reasons some of which are:

- (i) The current applications under the National Development Act 1979 confronting the practising lawyer.
- (ii) The need to be conversant with the Environmental Impact Report audit procedures and the role of the Commission for the Environment.
- (iii) The need to be able to turn to a concise exposition of the law relating to water, noise and pollution.
- (iv) The need to be aware of the problems associated with litigation in the environmental field.
- (v) The need to be aware of the interrelationship between tort, administrative law and town and country planning law.
- (vi) The need to be aware of the numerous statutory provisions involving environmental issues and planning for industrial development in the environment.

Mr Williams, through a high standard of scholarship and thorough research, has presented a book which will help enlighten the reader concerning these matters. Mr Williams has not been afraid to point out the inconsistencies emerging in some of the decisions as the law develops in this field. It is all too easy in a book to give the author's understanding of the principles of law without going one step further and explaining the inconsistencies which have evolved in a developing area of the law. Mr Williams does not enter into an academic debate to the extent that the arguments become esoteric and of little use to the practising lawyer but he does point out pitfalls in areas where care must be taken.

The author's technique when dealing with substantive matters such as

air pollution, noise and water, is to first state the position at common law and then to examine the statutory provisions and provisions contained in delegated legislation such as bylaws. The author is often compelled to conclude that there is a need for the provisions to be tested in the courts and this is not surprising when it is realised that many of the statutory provisions are comparatively recent.

It is also clear from the book, particularly in chapter 2 on "Air Pollution", that many decisions are made within the government departments concerned. It is therefore difficult to point to cases where statutory provisions have been tested. However, the author has drawn on departmental papers which enable him to proffer sufficient information for the lawyer to compile submissions on behalf of clients to the departments concerned. Frequently textbooks fail to assist the reader unless the subject has involved litigation. In planning for industry, in particular, it is necessary to be aware of the departmental consents required and Mr Williams' book is helpful in this context.

The book deals both with substantive issues in environmental law and procedural matters. The chapters are conveniently divided into the subjects of air pollution, noise, water law, marine pollution, forests, native plants and trees and pesticides. The author then covers procedural matters such as environmental impact assessment and reporting, the National Development Act 1979 and the special procedures for proposed works of national importance, some special problems of environmental litigation and in the appendices he deals with environmental protection and enhancement procedures and environmental and enhancement operations.

There are numerous aspects of this book which invite comment but room permits me to deal only with two areas which I found of particular use and interest. These areas involve planning for major industry and are contained in the chapters on water law and the National Development Act 1979.

Since Mr Williams has written his book the first application under the National Development Act has been dealt with by the Planning Tribunal. This was an application by Petralgas Chemicals (NZ) Ltd to construct a stand-alone methanol plant with associated infrastructure. It was evident at that hearing that the National Development Act involves a number of issues which are going to require careful examination in the future; for example, whether or not the Act enables alternatives to be considered by the Planning Tribunal. The nature of the Tribunal's inquiry is also of importance as it is not sitting on appeal but on a first instance assessment. It is clear that the National Development Act allows public scrutiny of many departmental procedures which would normally be carried out within the confines of the department, for example, pipeline authorisations under the Petroleum Act 1937 and consents under the Clean Air Act 1972. This public right to scrutinise departmental decisions is a beneficial aspect of the legislation.

With further applications filed to enable the construction of a synthetic petrol plant and an aluminium smelter at Aramoana, the importance of the "fast track" procedure cannot be understated.

The statutory recognition of the Commissioner for the Environment and the right to compel the Minister of Works and Development to give evidence are two of the unusual aspects of the Act. The relevance

of many of the issues raised by Mr Williams in his book may now be argued before the Planning Tribunal. It is hoped that in light of the current applications the author will consider a supplementary volume which will examine the National Development Act procedures after they have been experienced in practice. It is further hoped that he will dedicate some of his talent to the implications of the National Development Act on other legislation such as the Petroleum Act 1937, the Clean Air Act 1972 and the Historic Places Act 1980.

The chapter on water law is an excellent exposition of the law involving a code which has developed to replace common law rules. The author's treatment of the different types of water right that can be sought is helpful both to the lawyer and the statutory authorities administering the Water and Soil Conservation Act 1967. The importance of being aware of the controls which exist when dealing with such a valuable resource will be obvious to the reader.

Mr Williams is wise to devote only a short section (para 455) to conditions in water rights for these are matters which must be dealt with in the circumstances of each individual case and it would be impossible to attempt to formulate a model set of conditions. The treatment of spray irrigation and mixing zones is helpful. A draft Water and Soil Conservation Bill is currently being considered and I trust that if that Bill is enacted, a second edition will examine that Act.

This book illustrates the necessity for students wishing to practise in the field of environmental law or wishing to pursue the study of environmental law, to have a thorough knowledge of the law of tort, administrative law and town and country planning principles. On reading this book it will be found axiomatic that environmental law should be taught in conjunction with these subjects in universities.

I congratulate Mr Williams on this book which will be of real assistance to lawyers and students alike.

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