

# BOOK REVIEW

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DAVID FARRIER AND PAUL STEIN (EDS), *THE ENVIRONMENTAL LAW HANDBOOK: PLANNING AND LAND USE IN NEW SOUTH WALES* (THOMSON REUTERS, 5<sup>TH</sup> ED, 2011) 846PP

Environmental law in Australia has developed into a complicated and ever-changing area of law. According to Professor David Farrier, ‘environmental law’ ‘is concerned with resolving disputes about the use of resources, whether natural or human-made.’<sup>1</sup> The principal aim of this book is to provide law students, lawyers, policy officers and the broader community with a current and comprehensive, yet easy-to-read overview of the corpus of laws in New South Wales pertaining to planning, land-use and environmental protection.<sup>2</sup> The significance of this book does not lie in its analysis or subject-matter,<sup>3</sup> but rather in its ability to present an accurate description of the law in a way that lawyers and lay-people alike can make sense of ‘environmental law’. In my view, this book achieves its purpose.

The value of this book rests, to a considerable extent, on the inclusion of the *Environmental Planning and Assessment (Part 3A Repeal) Act 2011* (NSW) which represents a major change to the approval procedures for ‘state significant development and infrastructure.’ Even though the vast majority of this book is updated in light of this amendment, some sections (see pages 720 and 725) still refer to the former pt 3A. Because the field of modern environmental law is a creature of statute, this book is logically based on and coordinated around relevant statutes. The table of statutes alone comprises 31 pages. Case-law is also cited and is often summarised throughout the book to provide practical examples of how certain statutory provisions have been interpreted and applied by the courts. The table of cases comprises 14 pages.

In terms of the structure of this book, it can be separated into three broad sections. The first section (chapters 1 and 2) provides the necessary contextual background to environmental law in New South Wales. Professor David Farrier authors both chapters. Chapter one covers a range of topics, including: the key features of environmental law; the concept of ecologically sustainable development and the precautionary principle; types of land tenure; and the sources of environmental legislation. Chapter two overviews the legal tools and instruments that are used to implement environmental and land-use objectives, such as criminal law, planning, contract, the law of nuisance and economic instruments. For novices in this field, this section provides a very useful and clear starting point for an understanding of environmental law.

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<sup>1</sup> David Farrier and Paul Stein, *The Environmental Law Handbook: Planning and Land Use in New South Wales* (Thomson Reuters, 5<sup>th</sup> ed, 2011) 2.

<sup>2</sup> *Ibid* vi.

<sup>3</sup> See Rosemary Lyster et al, *Environmental and Planning Law in New South Wales* (Federation Press, 2<sup>nd</sup> ed, 2009).

The second section (chapters 3 to 8) covers the foundational areas of planning and environment law in New South Wales. Chapter three examines the different types of planning instruments under the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) and usefully explains the practical importance of these instruments in light of the broader planning framework. Chapter four primarily considers the requirements under the Crown Lands Act 1989 (NSW) in relation to the disposal and lease of crown lands for particular purposes. It also discusses the environmental protection provisions within this legislation<sup>4</sup> and the special development restrictions for ‘reserved areas.’<sup>5</sup> Chapter five comprehensively sets out the assessment and approval requirements under the EPA Act for various types of development and changes to land-use. This chapter gives particular attention to s 79C (factors of approval) and s 94 (contributions) of the EPA Act.

Chapter six specifically reviews part 5 of the EPA Act, which requires the assessment and approval of ‘activities’ which are not governed by part 4 of the EPA Act. Pages 268-9 provide details on the role of environmental impact statements and species impact statements in decision-making. Chapter seven diverts the focus of the book from New South Wales legislation to Commonwealth legislation (Environmental Protection and Biodiversity Conservation Act 1999 (Cth)). Although this chapter adequately covers the Commonwealth assessment and approval procedures that may apply to certain activities in New South Wales, it lacks detail on the bilateral agreements that exist between the Commonwealth and New South Wales. Chapter eight examines the role of local governments in relation to land-use management, the creation of plans and environmental reports and information-keeping requirements under the Local Government Act 1993 (NSW).

The third section (chapters 9 to 20) covers select topics in environmental law. Chapter nine deals with pollution and waste control. It principally considers the relevant approval requirements and enforcement and liability provisions under the Protection of the Environment Operations Act 1997 (NSW). It also considers a range of economic instruments that aim to reduce pollution in New South Wales.<sup>6</sup> Chapter 10 briefly reviews the mix of New South Wales and Commonwealth initiatives that seek to reduce greenhouse gas emissions in the electricity generation sector. Chapter 11 reviews the legal regime in New South Wales that governs agricultural activities. This chapter explains the different obligations placed on farmers in eastern and western districts of New South Wales.<sup>7</sup> It also briefly covers a range of Commonwealth laws, including the national weed scheme.<sup>8</sup>

Chapter 12 reviews the framework of international,<sup>9</sup> Commonwealth and New South Wales laws that aim to protect biodiversity on privately-held land. The main legislation cited in this chapter is the Environmental Protection and Biodiversity Conservation Act 1999 (Cth), the Threatened Species Conservation Act 1995 (NSW) and the National Parks and Wildlife Act 1974 (NSW). Relevant

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<sup>4</sup> Above n 1, 125.

<sup>5</sup> Ibid 137-9.

<sup>6</sup> Ibid 375.

<sup>7</sup> Ibid 433.

<sup>8</sup> Ibid 441.

<sup>9</sup> Ibid 466-9.

environmental planning instruments are also reviewed. Chapter 13 deals with forestry arrangements in New South Wales, with an emphasis on 'regional forestry agreements' and the requirements contained in the Forestry Act 1916 (NSW). This chapter also briefly considers the novel question of whether financial credits can be collected for electricity produced from 'wood waste' under the Renewable Energy (Electricity) Act 2000 (Cth).

Chapter 14 primarily focuses on the additional planning requirements for 'coastal zones' under the Coastal Protection Act 1979 (NSW) and State Environmental Planning Policy 71. Chapter 15 concerns the allocation of water and water management regulations in New South Wales, a topic which is currently causing controversy between environmental and agricultural interests. The main law reviewed in this chapter is the Water Management Act 2000 (NSW). Chapter 16 provides an overview of the special planning requirements that apply in respect of catchment areas. This chapter also usefully outlines the role and functions of the Catchment Management Authority and the Natural Resources Commission. Chapter 17 focuses on the protection of heritage in New South Wales under the Heritage Act 1977 (NSW). This chapter briefly reviews relevant provisions under Commonwealth legislation and considers the role of the National Heritage Trust<sup>10</sup> and the Historic Houses Trust.<sup>11</sup>

Chapter 18 focuses on laws and planning instruments that regulate mining activities. It provides an overview of the ownership of certain minerals and is detailed in its treatment of the Mining Act 1992 (NSW). This chapter also considers laws that regulate mining on agricultural land,<sup>12</sup> which is a topical issue in Queensland given the recent passing of the Strategic Cropping Land Act 2011 (Qld). Chapter 19 comprehensively deals with the Fisheries Management Act 1991 (NSW), which regulates recreational and commercial fishing practices in New South Wales. The final chapter centres on aboriginal land rights under the Aboriginal Land Rights Act 1983 (NSW) and the Native Title Act 1993 (Cth). This chapter also considers the protection of Aboriginal culture and heritage under various pieces of legislation.

Because each chapter is individually authored, there is very little harmony throughout the book. Each chapter can essentially stand alone. It is unclear whether this was the intention of the editors. The effect of stand-alone chapters is that there is no constant theme and, at times, there is some unnecessary overlap between sections two and three of the text. Admittedly, this overlap may be regarded as an accurate reflection of the nature of environmental law in general. Overall, for as long as the legislation reviewed in this book remains current, this book will be a useful and practical guide to environmental, planning and land-use law in New South Wales for students, lawyers and policy officers. Given that the bulk of case-law in environmental law in Australia derives from the Land and Environment Court in New South Wales, this book will also have utility across all Australian jurisdictions.

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<sup>10</sup> Ibid 705.

<sup>11</sup> Ibid 706.

<sup>12</sup> Ibid 731.