SSRN tomorrow's research today

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

Vol. 10, No. 24: Dec 3, 2020

ALEXANDRA BRISCOE, ASSISTANT EDITOR
Victoria University of Wellington, Faculty of Law, Student/Alumni
alexandra.b.484@gmail.com

JOHN PREBBLE QC, EDITOR
Professor of Law, Victoria University of Wellington - Faculty of Law, Gastprofessor, Institut für Österreichisches und Internationales Steuerrecht, Wirtschaftsuniversität Wien, Adjunct Professor of Law, University of Notre Dame Australia - School of Law

MĀMARI STEPHENS, EDITOR
Reader, Victoria University of Wellington - Faculty of Law

Browse ALL abstracts for this journal

Links: **Subscribe ~ Unsubscribe** | **Distribution** | **Network Directors**

Announcements

Victoria University of Wellington Archival Collection Issue 9: Papers on the Precautionary Principle by Professor Catherine Iorns Magallanes

The Archival Collection is an addition to the Victoria University of Wellington Legal Research Paper Series that has been under consideration for some time. Covid-19 has caused a slow-down in many areas of human activity. For scholarly publishing, the virus has meant that VUW's Legal Research Paper series has space for older work. We have brought forward the distribution of papers written by Victoria University of Wellington staff from earlier years. To maintain momentum, however, the collection will include recent papers where their topic matches the topic of an issue in the Archival Collection. All papers will remain fully searchable on the VUW pages of SSRN, by both **papers** and **authors**.

Table of Contents

^top

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Murky Waters: Adaptive Management, Uncertainty and Seabed Mining in the Exclusive Economic Zone"

Policy Quarterly, Vol. 13, Issue 2, p. 10, 2017
Victoria University of Wellington Legal Research Paper No. 94/2020

CATHERINE J. IORNS MAGALLANES, Victoria University of Wellington - Faculty of Law
Email: Catherine.Iorns@vuw.ac.nz

THOMAS STUART, Independent

In 2012 the Exclusive Economic Zone and Continental Shelf (Environmental Affairs) Act (EEZ Act) established a discretionary consenting regime for resource activities and development in New Zealand waters beyond the territorial sea – the exclusive economic zone. The Act sought to strike a balance between economic development and environmental protection by obliging the Environmental Protection Authority (EPA) to consider adaptive management when deciding whether to grant consent to applications with uncertain effects. Adaptive management was seen as a way to temper a precautionary approach to environmental management and to allow for flexible decision making; it was initially welcomed by industry submitters, who have since reversed their views.

This article explores the reversal in industry attitudes towards the use of adaptive management in EEZ seabed mining applications. It discusses the concept of adaptive management and its application in New Zealand, before examining the different provisions in the EEZ Act that both encourage and proscribe the use of adaptive management in different situations. It will use the most recent application by Trans-Tasman Resources Limited (TTRL) to mine ironsands from the seabed in Taranaki to illustrate the difficulties of applying adaptive management in the EEZ. This article argues that the current legislative provisions have caused adaptive management an identity crisis, and left applicants and decision makers navigating murky waters.

"A Stitch in Time Saves... the Seabed? A Precautionary Approach to Mining in New Zealand's Exclusive Economic Zone"

Australasian Journal of Natural Resources Law and Policy, Vol. 18, No. 1, 2015: 1-21
Victoria University of Wellington Legal Research Paper No. 95/2020

CATHERINE J. IORNS MAGALLANES, Victoria University of Wellington - Faculty of Law
Email: Catherine.Iorns@vuw.ac.nz
GREGORY SEVERINSEN, Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: greg.severinsen@gmail.com

Environmental precaution has developed as one of the cornerstones of modern law concerning sustainability. The idea is that where there is uncertainty as to the effects of a proposed activity, such uncertainty should not be used as an excuse for taking no action to address effects. In common parlance, 'a stitch in time saves nine'. New Zealand's environmental law has a relatively short — yet rich — history of precautionary thinking. From its origins in European (and, in particular, German) municipal law and its translation into various international instruments, the idea of precaution found formal expression in New Zealand's resource management legislation from the mid-1990s. New Zealand's key environmental statute, the Resource Management Act 1991 (NZ) ('RMA'), does not specifically refer to precaution in its consenting context, yet the courts have seen a precautionary approach as inherent in its provisions in a variety of ways. In contrast, the recently enacted Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (NZ) ('EEZ Act') specifically requires decision-makers to favour caution and environmental protection when information is uncertain. However, the exact ways in which this is to occur are unclear.

This article considers the development of precaution as a legal concept in New Zealand environmental law, from its inclusion in the fisheries context to its most recent conceptualisation in the EEZ Act. The latter, the article argues, has drawn on the relatively weak and vague requirements of previous formulations, but has repackaged and strengthened them to produce a strong and directive approach to dealing with risk and uncertainty. It could mark a potential turning of the tide for precautionary thinking in New Zealand. Recent decisions concerning seabed mining have indeed suggested this may be the case.

"Expert Evidence in Support of Te Kaahui o Rauru"

Victoria University of Wellington Legal Research Paper No. 96/2020

CATHERINE J. IORNS MAGALLANES, Victoria University of Wellington - Faculty of Law
Email: Catherine.Iorns@vuw.ac.nz
DALE SCOTT, Victoria University of Wellington, Faculty of Law, Student/Alumni

The precautionary principle in s 61 of the EEZ Act appears short and simple and – being relatively young – without any history or baggage to encumber its interpretation and application. However, despite the Act being only a few years old, and there having been few chances to apply it, there is indeed a number of important matters to take into account in its application. The principle itself has a lengthy history at international law, and it has been applied by New Zealand courts for many years under different laws and policies. There is thus plenty of material for useful comparison with different formulations of it.

One of the most important factors to take into account is the subject matter it is being applied to. Application in the marine environment has been widely recognised as requiring a stronger precautionary approach than other settings. This is primarily due to the fact that less is known about the marine environment itself, with more reliance for predictions of future effects on scientific modelling that is necessarily incomplete. They may represent the best scientific knowledge available today, but that itself is incomplete. Thus, legal formulations of the principle requiring stronger environmental protection have been chosen for the marine environment worldwide, and including in the EEZ Act.

The key elements to work through in applying s 61 to any given set of facts are detailed in this submission.

"Expert Evidence in Support of Te Kaahui o Rauru"
Victoria University of Wellington Legal Research Paper No. 97/2020

CATHERINE J. IORNS MAGALLANES, Victoria University of Wellington - Faculty of Law
Email: Catherine.Iorns@vuw.ac.nz
DALE SCOTT, Victoria University of Wellington, Faculty of Law, Student/Alumni
THOMAS STUART, Independent

This submission examines the nature and scope of adaptive management in general, and as an approach defined in section 64 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act ("EEZ Act"). It clarifies the prohibition on adaptive management approaches in respect of marine discharge consents under section 87F(4) and addresses the question of whether the conditions proposed by Trans-Transman Resources Limited ("TTRL") in its 2016 consent applications amount or contribute to an adaptive management approach.

^top

About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachussetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

Submissions

To submit your research to SSRN, sign in to the **SSRN User HeadQuarters**, click the My Papers link on left menu and then the Start New Submission button at top of page.

Distribution Services

If your organization is interested in increasing readership for its research by starting a Research Paper Series, or sponsoring a Subject Matter eJournal, please email: **sales@ssrn.com**

Distributed by

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing (SSEP) and Social Science Research Network (SSRN)

Directors

LAW SCHOOL RESEARCH PAPERS - LEGAL STUDIES

BERNARD S. BLACK
Northwestern University - Pritzker School of Law, Northwestern University - Kellogg School of Management, European Corporate Governance Institute (ECGI)
Email: **bblack@northwestern.edu**

RONALD J. GILSON
Stanford Law School, Columbia Law School, European Corporate Governance Institute (ECGI)
Email: **rgilson@leland.stanford.edu**

Please contact us at the above addresses with your comments, questions or suggestions for LSN-LEG.

^top

Links: **Subscribe to Journal** | **Unsubscribe from Journal** | **Join Site Subscription** | **Financial Hardship**

Subscription Management

You can change your journal subscriptions by logging into **SSRN User HQ**. If you have questions or problems with this process, please email **Support@SSRN.com** or call 877-SSRNHelp (877.777.6435 or 212.448.2500). Outside of the United States, call 00+1+212+4482500.

Site Subscription Membership

Many university departments and other institutions have purchased site subscriptions covering all of the eJournals in a particular network. If you want to subscribe to any of the SSRN eJournals, you may be able to do so without charge by first checking to see if your institution currently has a site subscription.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

- **Accounting Research Network**
- **Cognitive Science Network**
- **Corporate Governance Network**
- **Economics Research Network**
- **Entrepreneurship Research & Policy Network**
- **Financial Economics Network**
- **Health Economics Network**
- **Information Systems & eBusiness Network**
- **Legal Scholarship Network**
- **Management Research Network**
- **Political Science Network**
- **Social Insurance Research Network**
- **Classics Research Network**
- **English & American Literature Research Network**
- **Philosophy Research Network**

If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact **site@ssrn.com** for more information.

Individual Membership **(for those not covered by a site subscription)**

Join a site subscription, request a trial subscription, or purchase a subscription within the SSRN User HeadQuarters: **https://hq.ssrn.com/Subscriptions.cfm**

Financial Hardship

If you are undergoing financial hardship and believe you cannot pay for an eJournal, please send a detailed explanation to **Subscribe@SSRN.com**

^top