

Research Findings on Environmental Conflict Resolution and the Interest in Young Environmental Law Activities: Recommending Action Now

A joint paper by:

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National Environmental
Law Association of Australia



Resource Management Law Association
of New Zealand Inc.

Introduction

The research mentioned in this paper is divided into two parts:

- Environmental conflict resolution (ECR) by John Haydon.
- The need for a Young National Environmental Law Association of Australia (Young NELA) by Andrea Towson.

In presenting our findings we show what has been done so far to put our research into action. We have included information on the Young Resource Management Law Association of New Zealand (Young RMLA) and on available awards and scholarships. Much more needs to be done to develop a closer collaboration between the Law Schools and Environmental Law professionals:

- Participate in the **Environmental Law Roundtable of Australia and New Zealand (ELRANZ)** which:
 - Provides a forum for discussion and development of proposals for the harmonization of environmental law throughout Australia and New Zealand.
 - Is a multidisciplinary forum open to interested professionals, government departments and agencies, statutory corporations, business, industry, NGOs, academics and students. Because many regulatory actions are within the local sphere, local government is included, as well.
 - Is an opportunity to put forward suggestions for ELRANZ Projects.
- Encourage student engagement in ELRANZ and have them join either the Young NELA or the Young RMLA.
- Encourage student participation in and the development of more awards and scholarships that promote aspects of environmental law.
- Environmental Law Students need networks. Young professionals need networks and mentoring. The Young NELA approach is allow the students and young professionals to organize their own activities suited to their needs.

Three urgent and immediate steps are recommended for each Law School:

1. Register as many staff and students as possible as **Associates of ELRANZ**. Simply email johnhaydon@ecodirections.com and a registration form will be sent to you. There is no fee for becoming an ELRANZ Associate. You will receive a copy of the ELRANZ Manual. We use email communication to keep Associates informed on projects.
2. While many academics are **members of NELA and RMLA** check and encourage all staff interested in environmental law to become members. Both Associations have good publications available to members and generous discounts on events. ELRANZ is a joint initiative of NELA and RMLA so taking up membership will support this program. Email johnhaydon@ecodirections.com or karol.helmink@xtra.nz.co respectively for NELA and RMLA membership

information. We have found 63 in the ALTA Directory for the Environmental Law Interest Group all of whom should be members of NELA or RMLA. Academics under 36 years are eligible to be members of Young NELA. Email youngnela@gmail.com for their information.

3. **Students are especially lucky.** For A\$30 students can become members on NELA until 30 June 2010 and automatically a member of Young NELA. Every student in the environmental law, planning law and resources law classes should join. The advantages include an electronic version of the journal and other publications together with access to the Young NELA network. The sooner students get networking the better. Mentoring is also available. For membership forms email youngnela@gmail.com For NZ\$70 full time students can join RMLA. Information is available from karol.helmink@xtra.co.nz

Environmental Conflict Resolution by John Haydon: The Two Dozen Findings

My research allows me to make the following findings:

1. A neutral facilitator should be appointed to supervise and mediate the discussions where environmental conflicts need to be resolved. A convenor would determine which parties were potentially affected by the conflict and invite them to attend the negotiations. These parties would be able to suggest other groups who may be affected, such that no party with important interests in the conflict is left out of the discussions.
2. A Conflict Assessment Report is often a useful preparatory tool for some ECR processes.
3. Environmental Issues need to be looked upon as matters of community concern.
4. It is important to emphasize that the type of participation needs to be meaningful otherwise sections of the public will come to distrust the process and then look for a confrontational approach.
5. The methodologies will vary with the circumstances and the role of a third party Facilitator should not be included where possible.
6. The challenge is to work positively at the issues; promote dialogue rather than polarised debate; and build on common ground.
7. Governments are part of the community, as are business, industry, non government organisations and individuals. It is important to note that governments cannot do everything alone for two basic reasons.
 - a. Firstly, the taxation resources of governments (collectively) are not at a sufficient level to be able to address all matters.
 - b. Secondly, there is a wealth of knowledge outside government which will benefit the process, if it is accessed.
8. There is enormous experience and expertise within non government organisations that has been built up over a long period of time. That is a valuable community resource which should be involved in cooperative environmental measures.

9. Business and industry have an important role to play in the contribution towards cooperative measures.
10. Academics have an important public interest role in the development and reform of environmental law and policy.
11. There is no one particular model of community consultation and participation.
12. What is important is that the consultation processes remain flexible and that the maximum opportunity to participate by relevant stakeholders is given.
13. How the resources for that participation are marshalled and managed is a matter for the individual project to examine.
14. Broad scale community consultation can occur first before the program is developed or alternatively the program is developed as a policy matter within a small but representative sample of the community.
15. It is important to recognise that the parties are “interest groups”—that is, they are composed of representatives of multiple entities with similar interests in the proposed legislation, but are represented in the discussions by only one person, who is responsible for reporting to all the entities.
16. A public awareness program encourages the broader community to become involved in the implementation of environmental laws and policy.
17. Negotiated rulemaking techniques (preferably including a Facilitator) can be used to help formulate new and amended environmental laws and policy.
18. With better environmental knowledge there is an opportunity to avoid disputes. The community needs to focus on dispute avoidance as one mechanism.
19. Accessibility to all relevant knowledge is fundamental to any consideration of dispute avoidance.
20. There is a need for trust so that all relevant information is recorded and available for public access.
21. It is an essential part of the right to public participation that that participation is based upon the best information available. If we all have access to the same information then the level of disputation can reduce.
22. Where environmental factual disputes arise, limited enquiries or “*fact finding assessments*” can be undertaken which are aimed at resolving the dispute.
23. Disputes will not be eliminated completely.
24. The Court system and Additional Dispute Resolution (ADR) are important but cannot be expected to deal with all potential disputes that are likely to arise.

Environmental Conflict Resolution (ECR) by John Haydon: The Role of NELA and RMLA and the ELRANZ

ELRANZ is a joint initiative of NELA and RMLA. Also the two organisations have entered into a Memorandum of Understanding (MoU).

The MoU provides for academic members of each organization to be part of an academic advisory group. Once you have joined NELA or RMLA it is recommended that

you should join the academic advisory group and become an ELRANZ Associate for no extra fee. Opportunities will arise where the academic advisory group will meet and interact with ELRANZ in such areas as research collaboration.

The strategic plan for NELA includes the harmonization of environmental laws across Australia. That theme has been picked up in the ELRANZ Manual which includes the New Zealand jurisdiction as well as all of the Australian jurisdictions.

ELRANZ makes use of multiple forms of ADR, including Negotiated Rulemaking, Neutral Facilitation and other consensus-building activities (collectively called ECR), in order to promote dialogue among various interest groups. The ultimate goal is to produce legislation that will resolve environmental issues in an environmentally sound manner, and will not result in excessive conflict after its passage.

The goals of the ELRANZ are to reach an environmentally sound consensus in environmental regulation that takes into account the interests of all groups potentially affected by the proposed regulation. Ideally, this will prevent future litigation about the regulation and will increase public compliance with and acceptance of the regulation.

The findings of my research have led to:

- A. The development of the **ELRANZ Manual** now in its 5th edition.
- B. The Manual sets out **five sample approaches** are given for ECR methods to be used in the roundtable discussions. These should not be considered limiting options, but rather possibilities upon which participants of the roundtable can build.
- C. First is the “**blank page**” **method**. The blank page approach encourages the regulatory authority to seek out public input early before a policy or law is considered for drafting, rather than holding back on public consultation until a discussion paper has been developed by the Government. The purpose of the blank page approach is to bring stakeholders into the policy creation process early. Building relationships of trust and cooperation are key components of public participation and consensus building. Common ground can be identified early in the process.
- D. The second approach is to draft a **discussion paper** with the identified interest groups and then to publish and distribute the paper, requesting feedback from interest groups and other important parties who may be identified after the paper is published.
- E. Third, the ELRANZ suggests the **process of visioning**. Visioning is “a process in which people build consensus on a description of their preferred future – a set of conditions they want to see realised over time”.
- F. A fourth possible method is **joint fact-finding**, which allows all parties to participate in identifying the issues, the experts, and the questions to ask the experts. This can be a very important means of resolving factual disputes that may arise if different interest groups have different experts with varying information on the issues at hand.

- G. Fifthly, ELRANZ suggests using available **technologies to communicate** with potential stakeholders as well as to disseminate information.
- H. The following are **ELRANZ projects**:
- a. The harmonisation of the law relating to Penalty Infringement Notices across Australia and New Zealand. After the circulation of a discussion paper and consideration of the comments received the **ELRANZ Report on Penalty Infringement Notices (PINS) for Environmental Offences: A step towards Consensus on the Law across Australia and New Zealand** was published. We are looking for enthusiastic volunteers to promote the implementation of the recommendations in the Report.
 - b. Promoting the better use of **Negotiated Rulemaking** throughout Australia and New Zealand. One option is to write a model Act and encourage its enactment in each jurisdiction. There are also cultural change aspects of using a consensus building approach to new and amended legislation which need to be promoted.
 - c. Encouraging **common planning and environment definitions** across all jurisdiction to help simplify the law through the common legislative approach and develop common jurisprudence. NSW and Victoria have common definitions that apply across the whole State. In reform process (still under way) Queensland looked at NSW and Victoria and is developing common definitions for Queensland. Other jurisdictions are continuing with reform processes. ELRANZ would like to develop a dialogue across the jurisdictions so the one set of common definitions can apply across all jurisdictions. It has happened with the Building Code of Australia and there is a growing trend within Australia to adopt common legislation approaches through Ministerial Councils.
 - d. Continuing to promote ADR through the **use of ECR techniques**. The most recent example was during March 2009 when I presented on various aspects of Environmental Conflict Resolution (ECR) in Kunming and Shanghai, China. I was assisted by Dr Jianbo Kuang in the organisation and presentations in English and Mandarin. Since the mid 1990s there has been the development of many Non Government Organisations (NGO) including those dealing with environmental issues throughout China. They are similar to NGOs in Australia. The presentations were to:
 - i. Yunnan Health and Development Research Association in Kunming
 - ii. Yunnan Province Department of Transport, Kunming.
 - iii. Yunnan University School of Law, Kunming.
 - iv. Yunnan Eco Network, Kunming.
 - v. Shanghai Oasis Ecological Conservation Center, Shanghai.The Yunnan Health and Development Research Association and the Shanghai Oasis Ecological Conservation Center used a form of interactive workshop of 3 hours and 2 hours respectively. The Q&A session at the Yunnan School of Law was extensive.
 - e. As ELRANZ includes developing alternative processes a very successful expert witness **Interactive Workshop for Young NELA** for young

experts interested in becoming expert witnesses or improving their skills and young lawyers interested in understanding how the expert meeting process works was held in Brisbane on 28 April 2009. The ELRANZ Manual says:

How many times have you attended a conference and wanted to see a particular issue developed further? Or wanted to have a greater time for discussion of a topic at the conference?

Young NELA successfully developed an interactive 2 hour workshop that replaces the usual “talkfest” seminar of lengthy presentations followed by a short Q&A time with the “interactive style” of shorter presentations followed by dialogue on topics that delegates had identified in answer to a questionnaire before the workshop and those issues which developed during the workshop discussion. The low number of delegates (around 30) for this type of workshop is suited to a boardroom style where the presenters and the delegates are around the same table in an informal setting.

Reform processes will continue across a wide range of topics. ELRANZ is a forum for the discussion of these reform topics. Total Quality Management (TQM) is a process of continual improvement for businesses, the professions and industry. So why not include the law? Litigation should not be abandoned as a public participation technique. There needs to be legislative recognition of “*environmental law standing*” to all persons. Each party should pay its own costs in public interest law litigation subject to some limited exceptions. A model for this is already in **section 4.1.23** of the **Integrated Planning Act 1997 (Qld)**.

Students and Young Professionals by Andrea Towson: The Findings

My research resulted in the following findings:

- The employment market for environmental practitioners is no longer restricted by State or National boundaries. There is a strong need for students and young professionals to develop an international professional network.
- In many Australian States there is not a dedicated students and young professionals chapter of the various environmental law associations. A notable exception is in Victoria which runs a very successful and well patronised, VPLEA Young Professionals Group. There is demand in other Australian States and Territories for a similar group which meets the professional and social needs of students and young environmental practitioners.
- Students and young professionals in the early stages of their careers required more networking opportunities, particularly opportunities to meet other professionals in different (complementary) professions. There is a need for a multidisciplinary organisation which encourages interaction and collaboration amongst the various environmental professions to assist in the development of better environmental law and policy in the future.

- Students and young professionals require targeted, relevant and interactive continuing professional development (CPD) opportunities. Many of the CPD programs run by other environmental law associations and professional CPD service providers are targeted only at lawyers with a number of years of experience in their field of practice. A typical examples of such CPD programs includes a formal legislation update in a large seminar room with up to 200 attendees. There is a need for informal, board-room style interactive workshops on the fundamentals of environmental law practice. Some relevant topics for students and young practitioners include:
 - What to expect when acting as an expert witness in planning and environment litigation;
 - How to brief an expert;
 - What is meant by mediation and ADR;
 - What makes a building a green building.

- Students and young professionals want to be involved in an organisation run by young people, for young people which is run from the ground up.
- Students and young professionals want to be involved in an organisation that represents good value for money. This is particularly relevant for many young professionals as in the current economic climate many firms are no longer subsidising professional memberships.

As a result of my research we started Young NELA in January 2009. The mission statement and objectives and their implementation are now in the 2009-2012 Strategic Plan for NELA. Young NELA's mission statement and objectives are set-out below.

Young NELA Mission Statement

As a committee of the National Environmental Law Association of Australia (NELA), Young NELA is focussed on serving the interests of young practitioners and students in law, planning, natural resources, environmental engineering, environmental management, environmental science, environmental impact assessment and any other profession involved in the environment.

A young practitioner is a person in the first six (6) years of practice in their profession, or a person under 36 years of age. A student is a person currently enrolled in undergraduate or postgraduate study at an Australian university in any of the above mentioned areas.

Young NELA is to further assist the interests of young practitioners and students and assist them to establish themselves within their area of practice by enhancing their professional skills through the provision of:

- Professional networking and mentoring opportunities;

- Continuing professional education and development;
- Opportunities to participate in the development of environmental law and policy;
- A social network.

Objectives of Young NELA

Young NELA intends to carry out its mission by:

1. Representing the interests of young practitioners and students in law, planning, natural resources, environmental engineering, environmental management, environmental science, environmental impact assessment and any other profession involved in the environment at a national level.
2. Promoting a multi-disciplinary approach to the development of environmental law and policy.
3. Conducting informational and professional development seminars on both a formal and informal basis.
4. Arranging and conducting events to enable young practitioners and students develop contacts in their profession, related fields of expertise and the wider community.
5. Working in collaboration with other likeminded organisations as part of NELA's strategic direction.

Implementation of the Objectives: Representing the interests of Young Practitioners and Students

Young NELA seeks to achieve this objective by:

- Encouraging a young practitioner or student to nominate for the NELA National Executive and maintain a presence on the NELA Executive. This will enable Young NELA to voice the opinions of young practitioners and students and raise issues of interest to young practitioners and students at NELA Executive meetings.
- Encouraging young practitioners and or students to become Associates of the Environmental Law Roundtable Australia and New Zealand (ELRANZ).
- Establishing a Young NELA page on the NELA website and establishing a regular presence in the NELA publications.
- Building the public profile of Young NELA.
- Increasing the membership of NELA, particularly student membership.
- Preparing detailed and accurate papers and submissions in relation to proposed amendments to environmental law legislation and other law reforms of relevance to young practitioners and students. By agreement these submissions may be prepared as part of broader NELA submissions.

Implementation of the Objectives: Promoting a multi-disciplinary approach to the development of environmental law and policy

Young NELA seeks to achieve this objective by:

- Encouraging non-lawyers to become committee members of Young NELA.
- Holding multi-disciplinary events, which enable members of various professions and students to network with a wide range of environmental practitioners.

Implementation of the Objectives: Conducting informational and professional development seminars on both a formal and informal basis

Young NELA seeks to achieve this objective by:

- Establishing a National series of ongoing informal lectures / panel discussions designed to assist young practitioners and students in integrating into their profession and enhancing their professional skills.
- Establishing a formal mentor program between members of Young NELA and NELA. This mentor program would provide young practitioners and students with access to experienced mentors from various fields of practice.

Implementation of the Objectives: Arranging and conducting events to enable young practitioners and students develop contacts in their profession, related fields of expertise and the wider community

Young NELA seeks to achieve this objective by:

- Organizing regular social events.
- Conducting one major event each year to which all young practitioners and students across Australia are encouraged to attend.

Implementation of the Objectives: Working in collaboration with and on joint projects with the various State and Territory Environmental Law Associations as part of the broader NELA strategic direction

Young NELA seeks to achieve this objective by:

- Developing relationships between Young NELA and other organisations including, but not limited to, EIANZ, PIA, QELA, VPELA and RMLANZ, ideally as part of the broader NELA relationship, to advance the objectives of Young NELA.
- Inviting members of other environmental law associations across Australia and New Zealand to attend Young NELA meetings.
- Support and become involved in the work of the Environmental Law Roundtable of Australia and New Zealand (ELRANZ).
- Facilitating roundtable discussions on various environmental law and policy issues across Australia.
- Where appropriate, preparing joint papers on environmental law and policy issues of national concern.

Progress of Young NELA by Andrea Towson

Since its establishment in January 2009 Young NELA has had a very busy and successful program of events. To date Young NELA has held launch functions in

Queensland (QLD), Victoria (VIC) and New South Wales (NSW). The Young NELA launch is currently being planned for Western Australia.

Young NELA has been fortunate enough to receive strong support and ongoing encouragement from the judiciary in QLD, VIC and NSW. In particular Young NELA would like to thank the generous support of the following members of the judiciary who generously delivered opening addresses at the various Young NELA launches:

- Justice Brian Preston of the NSW Land & Environment Court;
- Judge Alan Wilson SC of the QLD Planning & Environment Court; and
- Ms Helen Gibson, Deputy President of the VIC Civil & Administrative Tribunal.

The launch addresses delivered by Justice Preston, Judge Wilson and Deputy President Gibson are available to the public on the NELA Website (<http://www.nela.org.au>) under the Young NELA link.

The QLD Young NELA Chapter recently held an interactive expert witness workshop. The workshop was facilitated by Judge Alan Wilson SC and my co-author, Mr John Haydon of Counsel. The workshop was well attended and received overwhelmingly positive feedback. The anonymous exit surveys show that 33% found the workshop “extremely useful and very worthwhile” in terms of training for their professional careers while another 60% found the workshop “very useful” for this purpose. The remaining 2 respondents answered “neutral” where one was “very satisfied” overall with the workshop and found it “very useful” for the certified practitioner program. While one delegate did not answer the question all of the 29 who did answer said that the workshop met their expectations. As to the overall level of satisfaction with the workshop 46% said they were very satisfied while 54% were satisfied. In answer to this question none of the delegates answered “very dissatisfied”, “dissatisfied” or “neutral”. 40% said that the content of the workshop was highly appropriate given the time constraints and the other 60% said the content was appropriate. 40% said that the issues were discussed very adequately and 60% said they were adequately discussed. Mediation was covered at this workshop but there was a demand for more attention to this topic. The open ended question calling for comments on this workshop produced the following comments:

- Good environment to ask questions – ie encouraged participation.
- Great to get presenters’ personal points of view.
- Very helpful – enjoyed the interactive nature.
- Excellent presentations.
- Excellent.
- Very useful different perspectives from presenters.
- Enjoyed listening to examples and experiences shared.
- Excellent workshop notes (handout materials to take away).

- The candid discussion was very much appreciated to discuss often such formal matters.
- Well organised.
- Wonderful to have a Judge here and to sit down and discuss issues with him.
- The opportunity to ask the Judge questions is extremely useful.
- Should start on time (but the workshop had started 10 minutes late and went over 10 minutes).
- Good sized workshop – small and involved.
- Excellent choice of presenters.

Following the success of the interactive expert witness workshop, the QLD Young NELA Chapter is currently organising a follow-up interactive mediation workshop to be facilitated by Judge Michael Rackemann of the QLD Planning & Environment Court and Mrs Peta Stilgoe, Planning & Environment Court ADR Registrar.

If you and/or your students are interested in becoming involved anywhere across Australia with Young NELA, please email youngnela@gmail.com for further information and a membership form.

Young RMLA

The intention of the Young RMLA is to provide a forum for those in the early stages of their RMA career, say up to around 5-8 years or less experience in their respective fields to meet and share experiences, and to encourage the attendance of young/new members, non-members, as well as new members to the RMLA.

The Young RMLA initiative is not intended as a competing 'branch' of the RMLA, but to provide a greater incentive for young practitioners to join the RMLA, network with their peers and attend seminars / functions etc that might better meet their needs.

Awards and Scholarships

NELA (<http://www.nela.org.au/node/96>) awards an annual prize to the best environmental law essay by an undergraduate student. The topic for the essay is usually set in the first half of the year. The winner receives a framed certificate, airfare to the next National Conference and free conference registration. Special awards may also be made to an individual in recognition of their outstanding contribution to the field of environmental law.

The RMLA awards information is at <http://www.rmla.org.nz/aboutus.asp> In addition RMLA may provide one or more annual Masters Scholarships for study at any University under the conditions set out on their website. Scholarships may be awarded for study at a New Zealand or Overseas University. The purpose is to encourage graduate students from a variety of disciplines such as law, planning, engineering, geography, science, landscape architecture, urban planning and resource management, to focus their

research theses or dissertations on topics related to the application of resource management in New Zealand. See <http://www.rmla.org.nz/Scholarship.asp>

The Queensland Environmental Law Association (QELA) have academic prizes described at http://www.qela.com.au/01_cms/details.asp?ID=48 and a study break competition at http://www.qela.com.au/01_cms/details.asp?ID=49

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