

# LAW REFORM REPORT

This is the first in a new series of monthly updates, to keep members informed of the Law Society's current law reform activities.

## Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill

By Robert Makgill\* and Alastair Logan\*\*

**THE LAW SOCIETY** has made a submission on the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill, which sets out to establish an environmental regime for implementing New Zealand's rights and obligations under the Law of the Sea Convention 1982 (LOSC).

Activities covered by the Bill include seabed mining, some petroleum activities, energy generation, carbon capture and storage, and marine farming.

The Exclusive Economic Zone (EEZ) and Continental Shelf do not form part of New Zealand's sovereign territory. Rights to develop natural resources within the EEZ, and on the Continental Shelf, are conferred under the LOSC. Those rights are subject to the obligation to protect and preserve the marine environment (article 193 of LOSC).

The Law Society's submission is largely concerned with ensuring that the Bill is consistent with New Zealand's international obligations, and its current domestic legal framework for environmental management of the territorial sea under the Resource Management Act 1991 (RMA).

The submission raises some concerns over the way the Bill seeks to

address New Zealand's obligations under the LOSC and other sources of international law. For example, key international environmental law principles such as "sustainable development" and the "precautionary approach" are not appropriately reflected in the Bill.

The lack of clear direction on international obligations is carried over into inconsistencies between the Bill and the RMA, including: differences in purpose; failure to include matters of national importance; different planning controls; different criteria for consenting; and differing definitions of terms, including the definition of "environment".

Inconsistencies between the Bill, New Zealand's international obligations and the RMA have led the Law Society to question the ability of the Bill to achieve integrated management, which is a touchstone of modern environmental law. The Law Society points out that failure to achieve integrated management will result in unnecessary complexity and costs for the Crown, applicants, submitters (whether supporters, opponents or neutral), and decision makers.

The purpose and principles of the Bill (clauses 10, 12 and 13) are novel and not mirrored in the RMA or other relevant domestic legislation. The Law Society raises concerns that time will need to be taken to explore the meaning and application of these parts of the Bill through avoidable litigation.

The Law Society's submission suggests that the Bill be amended to make it consistent with the RMA and international law. First and foremost, this requires the purpose of the Bill to be amended to "sustainable management", as defined in s5 of the RMA. Another key recommendation by the Society is to replace the phrase "cautious approach" with

"precautionary approach" (clauses 10 and 13).

*\*Robert Makgill, a director of North South Environmental Law, was the principal drafter for the Law Society's Environmental Law Committee.*

*\*\*Alastair Logan, a partner at Ross Dowling Marquet Griffin, was lead drafter for the Law Society's Law Reform Committee.*

## US Supreme Court - amicus brief

The Law Society has joined Amnesty International and others in an amicus brief urging the United States Supreme Court "to consider international law and opinion ... when applying the Eighth Amendment's clause prohibiting cruel and unusual punishments" in relation to life sentences without parole for juvenile offenders. It is anticipated the brief will be considered by the Supreme Court in mid-2012.

## Recent submissions

The Law Society has recently filed submissions on:

- draft guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill; and
- the Exclusive Economic Zone and Extended Continental Shelf Bill.

The submissions are available at [www.lawsociety.org.nz/publications\\_and\\_submissions/submissions](http://www.lawsociety.org.nz/publications_and_submissions/submissions).

## Current law reform consultation

The Law Society is currently preparing submissions on a number of bills and government discussion documents (including the review of the Family Court). Lawyers are welcome to contribute comments to the Law 