
Book review

Editor: Judge Alan Wilson SC

CLIMATE CHANGE LITIGATION: ANALYSING THE LAW, SCIENTIFIC EVIDENCE & IMPACTS ON THE ENVIRONMENT, HEALTH & PROPERTY

Climate Change Litigation: Analysing the law, scientific evidence & impacts on the environment, health & property by Smith J and Shearman D: 2006, Presidian Legal Publications, ISBN 9780975725443. Pages: 187. Price: \$79 plus GST, softcover.

The only certainty about climate is that it changes – a phrase often voiced.

Due to the variable nature of climate and our lack of knowledge of the details of its processes, the idea of pursuing litigation for contribution to climate change with the associated legal standards of proof was at first intriguing.

Also intriguing is the background of the book itself. Dr Joseph Smith is a barrister and solicitor in South Australia but his research for the book was supported by the Australian National Health and Medical Research Council in view of the major public health issues posed by global warming. Professor David Shearman is Emeritus Professor of Medicine at the University of Adelaide and among other things, Secretary of Doctors for the Environment Australia (<http://www.dea.org.au> viewed 4 July 2007), an organisation that aims to address health issues arising from damage to the environment.

The initial intrigue in turning to the courts to make people accountable for contributing to climate change, is recognised by the authors and explained by simply extending the pollution scenario – if an organisation can be liable for polluting a public waterway (although by no means in all countries or States) then an organisation that causes harm by emitting greenhouse gases should be liable for harms resulting from the emissions – only the causal chain is longer and the harm further reaching and less easy to pinpoint.

Pursuing litigation for a concept which of its nature is unpredictable and variable is admitted as being a major obstacle for actions. There is a whole chapter of the book dedicated to “Establishing Causation: Legal Requirements and Scientific Evidence”. A critical step to establishing causation is demonstrating that climate change is occurring and that it is being caused by human activities. Although the majority of the scientific community now accepts climate change as a reality and that there is a significant alteration of the natural process due to human activities, it is a significant step to then prove the human causes to the court and then connect these causes to regional climatic conditions.

The difficulties that must be confronted if climate change litigation is to be pursued makes the book all the more interesting. An array of possible legal liabilities are outlined that could hold entities accountable for contribution to climate change and flow-on effects. As with most litigation, there are more examples of climate change cases in the United States and the book draws on these examples as well as those from Australia. Public and private law actions are analysed in separate chapters.

Private law actions include nuisance, negligence, product liability, breach of directors’ duties and liability under environmental pollution statutes, eg suing car manufacturers for monetary damages for contributing to climate change and the flow-on harm to the environment, economy and health.

Climate change litigation in Australia has been focused on public law actions by challenging the adequacy of the Environmental Impact Assessment (EIA) of projects under administrative law if the projects are going to produce significant greenhouse gas emissions likely to contribute to global warming.

The two main Australian cases highlighted in the book are *Australian Conservation Foundation v Minister for Planning* [2004] VCAT 2029 (*Hazelwood*) and the *Wildlife Preservation Society of Queensland Proserpine/Whitsunday Branch Inc v Minister for the Environment & Heritage* [2006] FCA 736.

The *Hazelwood case* and a decision post publication, *Gray v Minister for Planning* [2006] NSWLEC 720, acknowledge that EIAs in Australia should include consideration of the potential climate change impacts of projects. The cases otherwise only indicate the waters must continue to be tested before outcomes can be predicted, although increased scientific evidence would suggest prospects of proving climate change causes and impacts will improve.

Avenues of liability under international law are also explored. It is estimated that numbers of environmental refugees will greatly increase in the next 10 years, partly due to climate change. Populations of low lying coral atoll islands will be some of the first to be affected. With the dire predictions of submersion, the government of Tuvalu has previously threatened to pursue the United States and Australia under international law for causing their desperate situation. It is argued that Australia and the United States are more open as targets of litigation because of their refusal to ratify the Kyoto Protocol and being the first and second highest per capita emitters of greenhouse gases.

The book is an excellent introduction to the link between climate change, ecological health and human health. Some of the health-related predictions due to climate change that are outlined are: severe floods, storms and droughts; increase in extreme temperature related deaths; increased risk of infections carried by vectors such as mosquitos; and reduced crop and food production.

The indication from the book is that climate change litigation is not the solution to the problem but more a means of encouraging regulatory change and accountability. Australia has refused to ratify the Kyoto Protocol or accept internationally binding emissions reduction targets, instead focusing on voluntary action and some incentives for industry to reduce greenhouse gas emissions (although a change in approach seems to be upon us).

The reluctance of the government to acknowledge and address the issue of climate change has encouraged groups and individuals to look to the courts as a possible mechanism for recognising accountability of companies, governments and individuals for their contributions to climate change. Maybe the initial cases have already played a part – it is unlikely when writing this book, that the authors would have predicted Prime Minister Howard to be saying in June 2007 that a long-term emissions reduction target will be set by the following year.

The book is well researched and the authors' enthusiasm on the topic is obvious. Refreshingly the arguments of climate sceptics are not ignored and their arguments are acknowledged as being definite obstacles for legal challenges, eg when they point to the uncertainty of specific regional impacts regardless of acceptance of global harms.

It will be interesting to see how the climate change issue is dealt with in Australia and across the globe. It seems likely that legal actions will continue to have an important role to play in the grand scheme of climate change control and this book provides an interesting introduction to the issue.

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