

Climate Change Adaptation Research Grants Program

- Social, Economic and Institutional Dimensions Projects

Project title:

An assessment of Australia's existing statutory frameworks, associated institutions, and policy processes: do they support or impede national adaptation planning and practice?.

Principal investigators:

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Lead organisation:

The Australian National University

Objectives:

The objectives of the project are to:

- (i) assess the extent to which current policies and institutional arrangements promote or impede climate adaptation, in practice, and
- (ii) make a significant contribution to the development and implementation of a strategic national policy framework.

Project design and methods:

Project Methodology

Before undertaking an assessment of existing statutory arrangements & policy processes, an important distinction needs to be made: there is a difference between the existence of laws to support adaptation planning & practice; the implementation of those laws and; finally, the potential of those laws & processes to support climate adaptation, following review & reform. We make this distinction because a raft of statutory & institutional arrangements has been adopted which could in principle support adaptation, but their use & efficacy hitherto has been limited in some areas, & ad hoc in others. An example to illustrate the point: the current EPBC Act (1999) makes provision for the extensive use of strategic environmental assessment (SEA), but that provision is under-utilised for a variety of reasons, and, even where it is invoked, the successful implementation of SEA depends to a large extent on the quality of existing assessment processes & human & information resources in the relevant sector. Therefore, the adequacy of such processes & resources should be scrutinised closely in other sectors in considering the application of SEA, as inadequacies of sectoral capacity may be a severely limiting factor in many cases. Indeed the application of SEA may quickly identify weakness in existing capacity, an incidental but valuable service. A further, less directly linked example is the potential use of regulatory impact statements.

Thus, the methodology in this project must encompass three types of information to achieve its objectives, outlined below with the relevant cluster of the project highlighted in parenthesis:

1. Review & synthesize the existing literature concerning appropriate & optimal statutory arrangements & policy processes for climate adaptation planning & practice, which will necessarily include review of current knowledge & understanding from relevant sectors (i.e. water policy, extreme events etc.), as well as the recent work on climate adaptation & adaptive governance (**Part 1 & Part 2**).
2. Review existing legislation, key agency strategic plans & policy goals, relevant reports, submissions & enquiries (state & federal) etc. as well as any proposed reforms to legislation and/or policy processes (**Part 1 & Part 3**).
3. Interview leading experts on climate change adaptation, federal & state government organisations & key stakeholders in policy processes to feed into both the development of the assessment criteria (**Part 2**) & provide much-needed intelligence in the assessments (**Part 3 & Part 4**) from key endusers.

Project design

Under the Chief Investigator's leadership, and working with the project team, it is envisaged that one Postdoctoral Fellow will be employed to work on the project full time, and one Research Assistant will be employed to work on the project part time (0.5FTE). Identification and appointment of those research staff will commence as soon as the project has been approved. To achieve its aims, the project will be divided into four sequential parts, described in brief below.

Part 1: Identification of relevant Federal and state statutory arrangements and their associated institutions

It is neither possible nor necessary to assess all Federal, State and Territory legislation that are relevant in order to better understand how those arrangements support or impede climate adaptation. Rather, there are a number of ‘core’ statutory arrangements that are obvious inclusions in the assessment (most notably the *Environmental Protection and Biodiversity Conservation Act 1999*, including possible trajectories of reform post Hawke review; Commonwealth Regulatory Impact Statements; State and Territory environmental planning and assessment legislation; State and Territory development legislation and associated codes/ regulations; and legislation governing extreme events) and then there are ‘peripheral’ arrangements which need to be identified and a short-list made. It is anticipated that only those ‘peripheral’ arrangements which have widespread applicability between jurisdictions and/or which offer common insights will be assessed. The first milestone in the project will be to identify which ‘core’ and ‘peripheral’ arrangements merit assessment in the project so as to meet the project’s two objectives. To ensure we capture those which are most relevant, an important part of the project will be the advice provided by the project’s Advisory Board which should include representatives from the state judicial system; State and Territory agencies; the Productivity Commission; and independent experts.

Part 2: Development of criteria to assess the appropriateness and capacity of chosen statutory and institutional arrangements

A critical aspect of the project is the development of the assessment criteria: how do we know if existing statutory and administrative arrangements and policy processes support or impede climate adaptation, now or potentially in the future? Drawing on the extensive literatures on sustainability policy, adaptive governance, and public administration, and the expertise of the Advisory Board, the project team will identify a number of criteria by which to judge each case study, which may include issues such as: (i) Explicit inclusion of climate adaptation, or scope for inclusion, via statutory objectives or regulatory guidelines, (ii) Existence of overlap, ambiguity, or contradictions in legislative requirements or processes, (iii) Generic (systemic) reach, rather than ad hoc or project specific, and related issues concerning appropriate scale or scope of implementation and regulatory arrangements, (iv) Applicability to relevant policy and decision-making responsibilities, (v) Sufficiency of resources, including human, informational and financial resources to implement existing arrangements, (vi) Information and knowledge gaps, including missing stakeholder contributions, (vii) Existence of incentive gaps and conflicts for private and public sector actors that risk impeding adaptation, including shortfalls in accountability and transparency arrangements, or perverse public revenue or funding linkages, and (viii) Existence of conflicting strategic policy goals frameworks, which create unintended outcomes. In addition to analysing the available literature, the development of the assessment criteria will benefit from interviews with leading experts on climate adaptation and federal and state government organisations. Note that not all criteria will be appropriate for all case studies.

Part 3: Critical analysis of the key statutory and institutional arrangements and policy processes

Having identified, in Part 1, the key institutions for climate adaptation at the federal level, and a number of case studies at the state level, we will then apply the assessment criteria developed in Part 2 to those arrangements. Analysing each case study according to the assessment criteria will require different approaches depending on the criteria. For instance, if we take the first criteria listed above, ‘explicit inclusion of climate adaptation, or scope for inclusion, via statutory objectives or regulatory guidelines’, this will require a relatively straightforward assessment of legislation or other documentation pertaining to the case study. However, to ascertain the extent to which a particular law or process is sufficiently resourced as to be effective in meeting its intended objective, deeper analysis will be required. Thus, it is envisaged that interviews will be conducted with the key end-users, stakeholders and experts for the case study in question, as well as investigation into case law and administrative procedures.

Part 4: Identification of possible legislative reform and other policy recommendations

For the most part, the project will unfold sequentially through each case study so that the identification of possible legislative reform and/or policy recommendations is on-going. We will synthesise the insights gleaned from the assessments undertaken in Part 3, with a view to indentifying: (i) where and how existing statutory and institutional arrangements should be reformed or better utilised, (ii) where new statutory or institutional institutions may be necessary, (iii) the core features of these and (iv) the most appropriate agency to carry out those reforms.