

Climate Change Adaptation Research Grants Program

- Settlements and Infrastructure Projects

Project title:

Limp, leap or learn: Developing legal frameworks for climate change adaptation planning in Australia.

Principal investigators: Professor Jan McDonald

Lead organisation: University of Tasmania

Objectives:

This project will identify the criteria and characteristics necessary to create legal and institutional frameworks that facilitate adaptation planning in Australian settlements. It will contribute to enhanced governance of urban adaptation planning by focussing on the interplay between formal rules (including their judicial interpretation in litigation), institutional arrangements for implementation, and the regulatory culture of administering agencies. Examining the broader institutional and policy context within which adaptation planning laws have been introduced, applied, contested, and sometimes rejected is essential to understanding current legal approaches. This understanding will point to opportunities and prerequisites for reform, elaboration, and improvement.

In order to analyse the strengths and weaknesses of current arrangements, the project will compare and contrast the legal frameworks for planning for coastal impacts of climate change and those for the increased risks of bushfire. This analysis will consider formal planning laws, coastal and emergency management laws, and the applicable property law, liability and insurance regimes. It will take a socio-legal approach through a combination of formal legal analysis, archival research, and extensive stakeholder interviews across the country. This will be the only project of its kind to combine a detailed legal and institutional analysis of adaptation planning across two sets of climate impacts – increased coastal hazards and increased bushfire risks, and across Australian states and territories. Insights from this analysis will then be used to draw lessons for the broader role of law and legal frameworks in driving and enabling urban adaptation.

Project design and methods:

The design of this project is highly targeted. It deliberately focusses on the legal dimensions of climate change adaptation planning. Yet it acknowledges that all law operates within a social, political, cultural and economic context. Deeper insight into the context for the introduction and design of formal rules, the organisational culture behind implementation practices, and their interpretation by courts and decisionmakers, is therefore essential to understanding other potential roles for law in driving adaptation planning and to developing proposals for achieving best practice in legal and institutional frameworks (Adger 2006). The proposed socio-legal methodology is therefore aimed at understanding both the laws themselves and this critical context (Thomas 1997).

The project will be undertaken in five stages.

1. Literature review on the role of law in adaptation governance and legal research on legal and policy structures for managing coastal inundation and bushfire risks in Australia. Legal research will involve the collation and review of academic literature, laws, regulations, policies and plans relating to coastal inundation and bushfire risks.

2. Qualitative and archival research on adaptation law and governance.

This stage will have two components: (a) a review of archival materials in each jurisdiction to understand the evolution of legal frameworks addressing coastal hazards and bushfire risks; and (b) surveys and semi-structured interviews of decision-makers in local government (including employees and elected officials), state government agencies (including emergency services for fire and coastal flooding and erosion, environmental protection agencies responsible for coastal protection and management), and industry third parties (developers, planners and insurers) in each study area, to gain a deeper understanding of the nature and application of relevant legal and policy structures.

The interviews and surveys will seek information on the how the legal and policy processes were created and administered and how they could be improved. This information will be used in the next phase, and will provide one of the bases for the legal and policy recommendations. Where possible, interviews will be conducted face-to-face during visits to each of the study locations, but may be supplemented with telephone interviews depending on the availability of interview subjects at the time of visits. The use of interviews is preferred as experience shows these provide a richer source of information on the majority of the research questions than alternative research methods, such as simple questionnaires or written requests for information. However, one-on-one interviews may not be feasible in all cases. Interviewees may be unable or unwilling to attend interviews (in person or by phone) or to respond in person to particular questions. In addition, particular research questions (e.g. third party costs associated with planning processes) may be better answered using an alternative research method. In these instances, surveys may be used to obtain information on the nature and application of relevant legal and policy structures. It will be necessary for us to conduct several pilot interviews in the earlier stages of Phase 2 before we can determine the need for, or utility of, questionnaires.

3. Socio-legal analysis.

This will involve the analysis of the information derived from Stages 1 and 2 especially comparisons across states and across local government areas within states; (b) contrasts between approaches to different types of hazard and the responsiveness of legal approaches to changing conditions and uncertainties; (c) identification of lessons from past practices and weaknesses in current structures; and (d) the development of recommendations for improvements in laws, policies and practices.

4. Refining the research outputs.

An invitation-only symposium will be held involving 30-40 representatives from Commonwealth and State planning agencies, local governments, and peak industry bodies. Most of the invitees would already have contributed to the project by participating in interviews or providing the team with relevant documentary or archival material during stage 2.

The objectives of the symposium are to:

- educate and inform key end-user groups on research outputs in a cost-effective manner;
- engage those end-users as agents for the wider dissemination of results; and
- obtain constructive feedback from leading practitioners on the outputs and potential impediments to the uptake and implementation of the recommendations, in order to refine outputs to maximise their value and applicability for end-users.

To achieve these goals, the project report will be distributed to attendees prior to the symposium to ensure they have an opportunity to consider the research findings and the relevance of the recommendations to their activities or area of expertise. The symposium will be broken into themed sessions based around particular research findings or recommendations, and involve a short presentation on the research findings, followed by prepared responses by 2-3 stakeholders, and open discussion. There will be opportunity for stakeholders around the country to discuss and debate potential barriers to implementation which will serve an important educative function additional to the discussion of the project outputs themselves. Participant feedback from the symposium will be evaluated and the project report refined. The final report will then be distributed to attendees and other selected policy makers, as well as being jointly published by the project team. This report differs from the planned scholarly outputs. It will be prepared and presented with practitioner end-users in mind, to ensure that the important findings and recommendations are communicated in a way that promotes easy and rapid consideration and uptake to the wider planning community around the country.

5. Dissemination of outputs.

The research outputs will be disseminated via a project report aimed at a practitioner/end user audience and scholarly publications. It is expected that scholarly articles will be submitted to high ranking national and international climate change, law, planning and environmental policy journals. Briefings will also be held at the invitation of key stakeholders.