

Preface

Since climate change became an issue in the late 1980s, the focus of debate about global warming has been on the mitigation of greenhouse gas emissions. Adaptation to climate change has attracted much less attention. For some, it has been a taboo topic because of fears that discussion of adaptation could undermine the mitigation effort. For others, mitigation has been the priority while adaptation has been a second order issue that can be postponed until climate impacts become more acute. It is only in the past few years that there has been significant acceptance of the need to develop adaptation and mitigation policy in tandem and that the neglect of adaptation will lead to uncoordinated responses by different levels of government. It has also been widely acknowledged that climate change is already upon us and that it is likely to intensify over the coming decades. Australia's average surface temperature has increased by approximately 0.16°C per decade since 1950. The 21st century opened with the hottest decade on record and, in 2010, when this book was being finalised, we learned that 2009 was the second hottest year on record in Australia, after 2005. Projections of future warming are subject to considerable uncertainty but even under the most optimistic scenarios Australia's average surface temperature is likely to be around 1.0°C above 1990 levels by 2030. Given this prospect, legal and policy frameworks need to be established to facilitate appropriate adaptive responses to unavoidable climate change.

There has been a tendency in the past to view adaption in purely technorationalist terms, where the natural sciences provide information on possible impacts and optimal responses are then devised to minimise exposure and capitalise on opportunities. This overly simplistic view downplays the role of values and social, political and legal processes in defining responses. It also glosses over the relevance of vulnerability and adaptive capacity – or the ability of institutions and systems to respond to change. Developing strategies and frameworks that are capable of handling the complexity of adaptation requires a range of disciplines and expertise. Inputs from the natural sciences must be complemented with those from several other fields. The need for legal interventions to drive changes and frame public and private decision-making is the subject of this collection.

The book is the product of a conference co-convened by the ANU Centre for Climate Law and Policy and Griffith University's Socio-Legal Research Centre in Canberra in June 2008 with sponsorship from Baker & McKenzie.

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Most of the chapters were completed in the months following the conference but others, including Chapters 1, 2 and 7, were updated before publication. To our knowledge the conference was, and remains, the only gathering to look specifically at the legal dimensions of climate change adaptation. The book's focus is principally Australian, but the issues raised in many of the chapters will resonate broadly, especially across industrialised nations with comparable legal frameworks. Within the book, readers will find details on the threats posed by climate change and why adaptation is a pressing issue, an evaluation of theoretical and conceptual aspects of adaptation law and policy, and analysis on specific adaptation issues, including disasters, biodiversity law, insurance, liability and the role of the judiciary. It is a unique collection which illuminates the role of law and legal processes in supporting adaptation.

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