

# CLIMATE CHANGE

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**School of Law, James Cook University  
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## I INTRODUCTION

Ladies and gentlemen. I would like to thank the James Cook University School of Law and the Law Students' Society for inviting me to speak here tonight.

Tonight, I would like to speak with you about three matters within my areas of responsibility as Attorney General. First, I would like to talk about Natural Disasters and the need to do more to mitigate their impacts. Of course the people of this State sadly know through recent experience the devastating impact of natural disasters.

My view is that we can reduce loss of life and we can reduce cost by investing more up- front in mitigation.

I would then like to speak to a trend we are witnessing in the courts in Australia which are increasingly taking into account the affects of climate change as a basis upon which to make decisions.

And finally to the need to consider climate change in the context of national security.

Allow me to take each in turn.

## II NATURAL DISASTERS AND MITIGATION

Many of you would have been here when Tropical Cyclone Yasi made landfall in the early hours of 3 February this year. Although Townsville escaped the worst of Yasi, this town and many communities around it suffered considerable damage. I travelled to Townsville with the Prime Minister the day after Yasi hit and although I experienced only a small fraction of the aftermath, I was taken aback by the howling wind, the sight of trees simply uprooted and tossed on to the ground, and the volume of debris strewn across the streets. I cannot imagine what it

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must have been like to sit in your homes and wait for this massive force of nature to pass.

Even as we recover from the physical damage caused by Yasi, its impact is still being felt across Far North Queensland both economically and socially. And Yasi follows fairly hot on the heels of Cyclone Larry which hit Far North Queensland in March 2006 with devastating effect on the agricultural industry around Tully and Innisfail.

The good news following Cyclone Yasi was that some disaster mitigation measures put in place after Cyclone Larry – particularly changes to building codes to harden homes and businesses against the effects of cyclones – were instrumental in saving lives and minimising injuries. The bad news coming out of both Cyclone Yasi and the Queensland floods was that we still saw destruction and damage to residential properties and public infrastructure on an unprecedented scale.

It is expected that the total recovery and reconstruction cost to the Commonwealth alone will be more than \$6 billion. While the scale of these events was extraordinary, I strongly believe the enormous cost of reconstruction cannot just be attributed to forces of nature outside of our control.

There is a strong argument that the damage bill both here in Queensland and in other parts of the country affected by disaster last summer was exacerbated by a lack of investment in disaster mitigation initiatives and poor planning decisions which have left communities exposed to very significant disaster risk. I find it hard to accept that some households have received Government disaster relief assistance three times over the past 10 years simply because of bad luck. The emergency management community generally accepts that one dollar spent on mitigation can save at least two dollars in recovery costs.

Some even argue that this is a conservative estimate.

Flood mitigation works in Lismore illustrate the return on investment in mitigation and prevention. In 2005, after completing a \$19 million levee, Lismore experienced a one-in-ten year flood. The levee saved about \$15 million in recovery costs on that occasion alone and also played an integral part in minimising flooding in Lismore in subsequent years. There are many other examples both here and internationally.

In fact by rethinking our policies and approaches, we can be more resilient when disasters strike. And this is entirely consistent with international law to which I will shortly turn

I am pleased that following last year's events all levels of Government – Federal, State and Local – are examining these issues with a renewed sense of purpose.

In February this year the Council of Australian Governments agreed to the National Strategy for Disaster Resilience.<sup>1</sup> The Strategy sets out the priorities of all Australian governments for building disaster resilient communities across the nation. There are three aspects of the Strategy that I would like to emphasise.

First, governments cannot improve resilience alone. The Strategy emphasises that disaster resilience is a shared responsibility for individuals, local communities, businesses, the not-for-profit sector and governments.

Second, the Strategy is about providing all Australians with a better understanding of what we need to do about the disaster risks we face. To create a resilient nation, we all need the relevant knowledge, skills and abilities to take appropriate action. We all need to work in partnership with emergency services, local authorities and other bodies to manage risk and to minimise the impacts of disasters. To that end, the Strategy calls for greater individual and community empowerment, rather than relying on post disaster recovery efforts and financial assistance.

Third, and perhaps most important, the high-level objective of the Strategy is to bring about sustained behavioural change. It recognises that disaster resilience is a long-term outcome which will require collaboration and long-term commitment. The clear message is - we all have a role to play and we all have to be in it for the long haul.

The Standing Council on Police and Emergency Management is leading the implementation of the COAG agreed priorities. This includes working with Planning Ministers to ensure that land use zoning and planning decisions integrate consideration of priority hazards.

There are some encouraging signs that we are starting to take the need for disaster mitigation into account in the reconstruction and rebuilding phase following the past disaster season. In particular the decision to relocate the town of Grantham – which was devastated by the inland tsunami that ripped through the Lockyer Valley on the 10th of January – to higher ground, should be applauded.

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<sup>1</sup> National Emergency Management Committee, 'National Strategy for Disaster Resilience: Building our nation's resilience to disasters' (Report, Canberra, 7th December 2009) <[http://www.coag.gov.au/coag\\_meeting\\_outcomes/2011-02-13/docs/national\\_strategy\\_disaster\\_resilience.pdf](http://www.coag.gov.au/coag_meeting_outcomes/2011-02-13/docs/national_strategy_disaster_resilience.pdf)>.

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In addition, in August 2011 I approved the first ever application under the betterment provisions of the NDRRA which will see the relocation of the Adelong public swimming pool to an area above the flood level. ‘Betterment’ is available under Natural Disaster Relief and Recovery Arrangements to allow States and local governments to restore or replace essential public assets to a more disaster resilient standard. In other words, we should avoid rebuilding an asset in a way or in an area where there’s a better than even chance it’ll be damaged again, if there are alternative options. I understand the Queensland Government is also looking at a number of betterment proposals following last season’s events.

Initiatives like these are promising developments. But given the enormous natural disaster recovery and reconstruction bill that Australian taxpayers are being repeatedly asked to shoulder, I believe they are entitled to expect that Governments do more to mitigate the impact of natural disasters.

Without professing to offer commentary on the cause of recent natural disasters there is an unquestionably significant body of scientific research drawing a direct link between climate change and increasingly extreme weather events – including rising sea levels, flooding and mud slides, as well as increasingly prevalent bushfires. The scientific basis for this link is widely supported, including by the United Nations Framework Convention on Climate Change (the NFCCC), the World Meteorological Organisation, the Intergovernmental Panel on Climate Change, the CSIRO and the United States’ National Oceanic and Atmospheric Administration.

It is interesting that international law has been a motivator for State governments to implement environmental legislation to mitigate the effects of climate change.

In particular, under international law Australia is required to maintain programs and policies containing measures to facilitate adaptation to climate change including taking climate change into account in relevant policies and actions. We see those principles implemented in a range of State legislation including protection of coastal regions from inundation due to rising sea levels. Which brings me to my next topic: the issue of climate change and the courts.

### III THE COURTS AND CLIMATE CHANGE

Irrespective of action we can take to improve our approach to disaster

mitigation, there is a growing body of case law indicating that courts are willing to take the environmental impacts of climate change into account in their decision making around planning and other issues. As Jacqueline Peel, Associate Professor at the Melbourne Law School, has explained, ‘Environmental groups have long used litigation to address environmental problems. Climate change is no different.’

Peel points to an increasing number of cases coming before the Victorian Civil and Administrative Tribunal – or VCAT – raising issues of adaptation to future climate change along the Victorian coast following the Gippsland Coastal Board case. The Victorian Government subsequently developed policies on planning for coastal climate change and sea level rise.

Another area of the law where climate change is being considered by the courts is the area of wind farm applications. In these cases the effects of climate change are being used as an argument to ensure something happens rather than to prevent something happening.

This is in contrast to wind farm applications being regularly challenged by local community groups who oppose the development on the grounds of amenity and health concerns.

One example is the NSW Land and Environment Courts’ decision in *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd*.<sup>2</sup> In that case the judge allowed the development to proceed because of the broader public good associated with ‘reducing the cumulative and long-term effects caused by anthropogenic climate change’.

Water extraction rights are also being legally challenged on grounds related to the possible effect of climate change. In *Paul v Goulburn Murray Water Corporation & Ors*,<sup>3</sup> heard by the VCAT, a landowner challenged the right of two licensees who were permitted to extract groundwater on the applicant’s properties. The Tribunal heard evidence about the effect that climate change may have on the hydrology of the area, in particular the Ovens River and whether this uncertainly should lead to the application of the precautionary principle. In the end Member Potts determined that the allocations were sustainable under the range of climate change scenarios presented by the experts.

These cases have focussed on what Peel has termed as ‘five common

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<sup>2</sup> [2007] NSWLEC 59.

<sup>3</sup> [2010] VCAT 1755.

features' of climate change law in Australia.

They are, first, establishing a causal link between certain actions (e.g. mining) and the production of substantial greenhouse gas emissions. For example, in *Gray v Minister for Planning* ('Anvil Hill Case'),<sup>4</sup> Pain J of the NSW Land and Environment Court considered that

[t]here is a sufficiently proximate link between the mining of a very substantial reserve of thermal coal in NSW, the only purpose of which is for use as fuel in power stations, and the emission of GHG which contribute to climate change/global warming.<sup>5</sup>

Second, the indirect and cumulative impacts of climate change. Third, the role of environmentally sustainable development principles. Fourth, the scientific proof of climate change, and finally, a continuing role for the courts.

Clearly there is a case for governments at all levels to acknowledge these developments with a view to taking a nationally consistent approach to these issues. Accordingly, I intend to raise this growing jurisprudence with my ministerial colleagues at Standing Council on Police and Emergency Management (SCPEM).

I would now like to turn to the final topic this evening: climate change as a potential threat to national security.

#### IV CLIMATE CHANGE AND NATIONAL SECURITY

As Attorney-General, my responsibilities include the coordination of Australia's response to a broad range of national security threats. From terrorism to natural disasters through to people smuggling and organised crime – the dangers to Australia and its citizens are clear and undeniable.

While the environmental and economic threat of climate change to Australia and the world is well traversed, it is only in the past couple of years that we have begun to properly explore and properly articulate climate change as a clear threat to our national security. Following the 2007 election, the Government commissioned the Garnaut Climate Change Review – led by Professor Ross Garnaut – to conduct an independent study of the impacts of climate change on the Australian economy. Garnaut reported in June 2008 that climate change is metamorphosing from an environmental concern to a core issue for

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<sup>4</sup> (2006) 152 LGERA 258.

<sup>5</sup> Ibid, 288.

national and international security. He noted that should climate change coincide with other transnational challenges to security, such as terrorism or pandemic diseases, or add to pre-existing ethnic and social tensions, the impact will be magnified.

Garnaut concluded that prudence and sensible risk management suggest that Australia's strategic planners ought to include worse case climate change scenarios in the contingency planning as they do for terrorism, infectious diseases and conventional military challenges to national security.

In 2007, the then Australian Federal Police Commissioner, Mick Keelty APM described climate change as 'the security issue of the 21st century'.<sup>6</sup> Mr Keelty also referred to the prospect of large scale civil unrest resulting from climate change and its implications for law enforcement within Australia

Given these comments and the findings of the Garnaut Report, this Government clearly identified the security implications of climate change in Australia's first National Security Statement made by then Prime Minister Kevin Rudd in 2008.<sup>7</sup> The Statement recognised that over the long term, climate change represents a fundamental national security challenge for the long term future. It also observed that less attention had so far been given to the potential threat of climate change compared with other traditional security threats. Finally, it stated this area of emerging consequences will require the formal incorporation of climate change within Australia's national security policy and analysis process.

Consistent with that approach, the 2009 Defence White Paper also identified climate change and resource security as new security risks.<sup>8</sup> The White Paper referred to the potential for future tensions over the supply of energy, food and water. It noted these issues are likely to exacerbate already significant population, infrastructure and governance problems in developing countries, straining their capacity to adapt.

Importantly, Australia and this Government are not alone in identifying

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<sup>6</sup> Mick Keelty, 'AFP in the new national security environment' (Speech delivered at the 2007 Inaugural Ray Whitrod Oration, Adelaide Convention Centre, 24th September 2007), [50].

<sup>7</sup> Kevin Rudd, 'First National Security Statement' (Speech delivered at Federal Parliament, Canberra, 4th December 2008).

<sup>8</sup> Department of Defence, 'Defending Australia in the Asia Pacific Century: Force 2030' (White Paper, Canberra, 2nd May 2009).

the national security threat of climate change and the belief that action is necessary to address this threat. These views are shared by international organisations such as the United Nations and the Governments of our closest allies – both on the left and right of the political divide.

United Nations Secretary-General, Mr Ban Ki Moon, has made several statements highlighting the security implications of climate change.

In his 2009 Report the Secretary-General identified five channels through which climate change could affect security.<sup>9</sup> These are vulnerability (climate change threatens food security and human health, and increases human exposure to extreme events), development (if climate change results in slowing down or reversing the development process, this will exacerbate vulnerability and could undermine the capacity of States to maintain stability), coping and security (migration, competition over natural resources and other coping responses of households and communities faced with climate-related threats could increase the risk of domestic conflict as well as have international repercussions), statelessness (there are implications for rights, security, and sovereignty of the loss of statehood because of the disappearance of territory), and international conflict (there may be implications for international cooperation from climate change's impact on shared or un-demarcated international resources).

The UN Secretary-General has also reflected on how the environmental effects of climate change in one country, can compound existing political, economic and social fragility which may in turn effect neighbouring countries and ultimately the entire international community.

The potential security threats of climate change for the United States are unequivocally highlighted in President Barrack Obama's May 2010 National Security Strategy.<sup>10</sup>

It says:

The danger from climate change is real, urgent, and severe. The change wrought by a warming planet will lead to new conflicts over refugees and resources; new suffering from drought and famine; catastrophic natural disasters; and the degradation of land across the globe.

Similarly, the National Security Strategy issued by the Conservative Cameron Government in October 2010 notes that the security of the

<sup>9</sup> United Nations, *Climate Change and its Possible Security Implications*, September 2009.

<sup>10</sup> United States, *National Security Strategy*, May 2010.



United Kingdom is: ‘vulnerable to the effects of climate change and its impact on food and water supply’.<sup>11</sup>

Finally, I note that the Pentagon in its January 2010 Quadrennial Defence Review addressed climate change for the first time. In the review, Pentagon officials concluded that climate change will act as an ‘accelerant of instability and conflict’, ultimately placing a burden on civilian institutions and militaries around the world.<sup>12</sup>

There are some people who remain to be convinced by the science on climate change.

But I think it is very instructive that an institution as traditionally conservative as the Pentagon is recognising that the risk of climate change is a sufficient basis for the United States to act.

The concept of climate change as a national security risk is now well and truly accepted internationally, across the political spectrum. Which makes it all the more an imperative for countries to work in concert consistently with international law to mitigate the effects of climate change.

## V CONCLUSION

In many respects, the implications of climate change for Australia and our region are clear. But it is sometimes difficult to grapple with the long term nature of the challenge and the less obvious potential impacts. Many of the decisions necessary to prevent or reduce these effects must be made now.

Australia stands ready to play its full and fair part in global efforts to tackle climate change. We have begun to incorporate the security implications of climate change into our national security contingency plans. We are working hard to ensure that we have coordinated and integrated capabilities, at both the domestic and international levels, to address this risk. And we are starting to seriously rethink the way we approach natural disaster prevention, preparation and mitigation. Failure to act now on the potential implications of climate change will exacerbate risks in the future. That is why the Government is so determined to take action. Thankyou.

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<sup>11</sup> United Kingdom, *A Strong Britain in an Age of Uncertainty: The National Security Strategy*, October 2010, 6.

<sup>12</sup> United States, *Quadrennial Defence Review*, February 2010, 107.

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