



ANU COLLEGE OF LAW

Graduate Studies in Law

ENVIRONMENTAL LAW

Last updated: November 2008

WELCOME TO GRADUATE STUDIES IN LAW

CONTACT INFORMATION

Please ensure that we have an up-to-date contact address and telephone number. The facility to change your address and other personal information is available through the Interactive Student Information Service (ISIS) using your Student ID and Password. <http://ISIS.anu.edu.au>.

All course correspondence will be conducted with your University Webmail account. You can access this email account at <http://students.anu.edu.au/> and clicking on the Webmail icon. There exists the facility to redirect your university email to a preferred account. You can do this at: <http://students.anu.edu.au/StudentITGuide/7olams.asp>

For all postgraduate enquiries please contact the Postgraduate Administrator:

Telephone: 02 6125 0510 or 02 6125 3965
Facsimile: 02 6125 3971
Email: pgadmin.law@anu.edu.au

The Director, Postgraduate Coursework Program, is Professor Don Rothwell, email: rothweld@law.anu.edu.au

The Postgraduate International Student Advisor is Ms Anne McNaughton:

Telephone: 02 6125 9619
Facsimile: 02 6125 3971
Email: anne.mcnaughton@anu.edu.au

COURSE INFORMATION

- We endeavour to have the full-course outlines available 4-6 weeks before the start of a course. When available they can be found on the web at: <http://law.anu.edu.au/PostGraduate/Courses.asp> under the course name.
- Reading materials are available from the Law Services Office. Copies of the reading materials are also placed in the Law Library. A list of materials can be found at the following website when they become available: <http://law.anu.edu.au/servicesoffice/index.asp>. Credit card payments are accepted by completing the online payment process. Cash payments must be made to the Cashier in the Student Administration Office. See the relevant Course Outline for more information.
- For details on essay submission, please see the relevant Means of Assessment. For hard copy submission, please use the Services Office essay chute near the counter. Essays submitted after hours can be placed in the Law Library book return chute. All assignments must be submitted with an Assignment Cover Sheet which is available at the following website: <http://law.anu.edu.au/servicesoffice/>
- The Services Office is open during the following hours:

DURING SEMESTER: Monday to Thursday 10.30am – 5.30pm, Fridays 10.30 – 5.00pm
First semester: 23 February – 5 June
Second semester: 20 July – 30 October

OUTSIDE SEMESTER: Monday to Friday 10.30 – 5.00pm

- Where enrolments in a course are less than 10, that course may not proceed. Students will be given as much notice as possible when a course has to be cancelled or changed.

STUDENT SERVICES

- There is a postgraduate student common room, Room 258, which is for your use at any time. The College supplies the room with disposable cups, coffee, tea and sugar.
- During the normal semester period the Law Library is open at the following hours:

Monday – Thursday 8.30am – 9.00pm;
Friday 8.30am – 5.00pm
Saturday – Sunday 1.00pm – 5.00pm

First semester: 23 February – 5 June
Second semester: 20 July – 30 October

For further information please check the website: <http://anulib.anu.edu.au/about/open/>

- Computer facilities are available to all students at a number of locations across campus. Please visit the following website for further information: <http://students.anu.edu.au/>
- Voucher parking is available in the car park in front of the Law School and other car parks on campus. Parking permits are also available from Parking Administration, John Yenken Building, Sullivans Creek Road. Parking is free at the ANU grounds after 5.00pm and at weekends.

We hope that you will enjoy your time studying here and that you will find it a rewarding and instructive experience. If you have any problems or need assistance of any kind, please do not hesitate to contact one of us. We would be pleased to be able to help you.

Postgraduate Administrator

Telephone: 02 6125 0510 or 02 6125 3965

Facsimile: 02 6125 3971

Email: pgadmin.law@anu.edu.au

<http://law.anu.edu.au/Postgraduate/>

Sue Hancock

Student Administration Manager

Telephone: 02 6125 3489

Facsimile: 02 6125 3971

Email: HancockS@law.anu.edu.au

<http://law.anu.edu.au/Postgraduate/>

WORKING RULES

See the following website for the working rules.

(this site will be updated with the 2009 rules in January 2009)

<http://law.anu.edu.au/Postgraduate/policies/Coursework/WorkingRules/workingrulesindex.asp>

HOW TO ENROL

Students enrol using the Interactive Student Information Service (ISIS). ISIS is used for updating your contact details, enrolling/re-enrolling and viewing your results. When you first login to ISIS there is an enrolment checklist that will take a few minutes to complete.

The steps for enrolling are as follows:

1. LOGON to ISIS using your username & password at: <https://anubis.anu.edu.au/login.asp>
2. **Task Wizard** - complete steps 1 to 4.
3. Read through any messages, check the boxes and click on '**Continue**'
3. **Student Home:**
 - a) Click on '**Enrolment**'
 - b) Click on '**Enrolment Details**' corresponding to the appropriate Program\Session combination
 - c) Click on '**Add**' button to add a new course
 - d) **Class Number** – enter number and click on '**Add Class**' or use '**Search**' button to find the class number
 - e) To **Add** another class - repeat Step d)
 - f) Click '**Continue**' when all courses of enrolment for the semester have been added.
 - g) Ensure the status is Successful and Click '**Save**' to confirm enrolment.

ANNUAL ENROLMENT

Every year you must re-enrol. The closing dates for re-enrolment are published in the SEAP Guide. SEAP Guides are available each year from late October and on the web at www.anu.edu.au/sas/SEAP_guide/. There are financial penalties for late enrolment.

ENROLMENT

The ANU College of Law Postgraduate Program offers courses in Semesters and Non-Standard Sessions. Each year you will need to enrol in both halves of the year, or you will need to apply for program leave. The year is divided as follows;

Summer Session, Semester One, Autumn Session	=	First half of the year
Winter Session, Semester Two, Spring Session	=	Second half of the year

RESULTS & GRADUATION

Results for postgraduate courses may not be available when standard semester results are released. This may affect your ability to graduate in the next ceremony. For approximate date of release, please check your means of assessment. As a general rule, results need to be available by mid-June for the July ceremony and mid-November for the December ceremony. Students should be aware that any late submission of work may mean that conferring of their award/degree may be delayed or that the offer to transfer to a higher level will be delayed to the point that a leave of absence may be required.

Graduate Policy on Attendance

Effective: 1 January 2009

For those graduate courses in law that are offered by face-to-face instruction via lectures or seminars the following policy on attendance has been adopted:

1. For those courses offered in the graduate programs in either intensive or semester-length mode the Postgraduate Studies Committee considers participation in the classes offered to be an important part of the educational experience of graduate study. Accordingly students are expected to attend those classes and Class Rolls will be taken for the purposes of verifying attendance. As courses may be scheduled on either weekdays or the weekends, upon enrolling in a course the college assumes that students have taken into account work, family, religious and all other commitments and are able to attend all advertised lectures or seminars in a course consistent with this policy.
2. Subject to paragraphs 3 and 5, or unless specified differently in the course description, students are required to attend all classes.
3. Recognising that some students face significant work place obligations which may, for example, require work-related travel to be undertaken at short notice, in exceptional circumstances a student may be granted permission by the teacher in consultation with the program/specialisation Convenor or Director, Postgraduate Coursework Program to be absent from some classes, provided:
 - (a) it does not exceed a maximum of 25% of the classes,
 - (b) permission is requested in advance of the classes from which the student will be absent, and
 - (c) the request is supported, where appropriate, by adequate documentation.In cases where permission is granted to be absent from some classes, the lecturer may request that the student undertake additional assessable or other non-assessable tasks.
4. Failure to comply with paragraph 2 may result in a student receiving the grade of NCN (non complete fail).
5. (1) Paragraph 2 does not apply to a student enrolled in a course in which a significant amount of teaching is delivered in whole on-line or by other means and this is made clear in the course description and materials.
(2) In such a case the student must substantially comply with any attendance requirement laid down for that course.
6. The normal pressures of work or planned personal trips do not constitute exceptional circumstances for the purpose of paragraph 3 to justify an exemption from full compliance of this policy. Students who have enrolled in courses which are conducted on weekdays are expected to have made appropriate arrangements with their employers for study leave.
7. This policy does not apply to students enrolled in the Graduate Diploma in Legal Practice.
8. This policy will be interpreted and applied consistent with all University policies relating to attendance including that applying in the case of misadventure.

Approved by Board of Studies –Graduate Program in Law meeting No.5/2002 held on 23/10/02 revised 10/12/02; revised Postgraduate Studies Committee (PSC) 10/08/05; revised 26/09/07; revised 13/08/08

This was correct at the time of printing, for future updates please see: <http://law.anu.edu.au/Postgraduate/Policies.asp>

POLICY ON EXTENSIONS

for submission of assessment in postgraduate courses taught in **intensive mode**

Effective: 1 January 2006

Unless otherwise stated in the Course Outline or agreed with students, the following deadlines for submission of pieces of assessment will apply in postgraduate courses taught in **intensive mode**:

1. The assessment for a course must be submitted no later than 6 weeks after the completion of the last class in the course.
2. The teacher in a course may grant an extension of up to four weeks beyond this date.
3. The Director, Postgraduate Coursework Program may, in exceptional circumstances, grant a further extension of up to an additional two months.
4. No further extensions will be granted beyond a total of three months from the original deadline for submission, unless the Director, Postgraduate Coursework Program considers that the circumstances would satisfy a special examination. <http://www.anu.edu.au/cabs/rules/examstfrules.pdf>
5. Examiners in intensive courses should endeavour to submit final results by four weeks after receipt of assignments from students.
6. Applications for extensions should be made before the applicable deadline.
7. If assessment is submitted after the due date and time without an approved extension, the mark awarded will be reduced by 1% of the marks available for that assessment item (when expressed as a mark out of 100) for each day or part thereof (including weekends and Public Holidays) that it is submitted late. For example, if an individual assessment item is given an initial mark of 65% but is submitted 2 days late, the mark awarded will be reduced to 63%. If the item is submitted 5 days late, the mark awarded will be reduced to 60%.

The normal pressures of work - including predictable periods of high workload - are not generally sufficient to justify extensions. Students are encouraged when planning for their participation in postgraduate courses to set aside not just the days needed to attend classes, but also a sufficient number of days to research and write the assignment.

Students should note that those who seek extensions may not receive their results in time to graduate at the next ceremony or at the advertised time for the release of results. International students should in particular take note of the delays that may result from submission of assessment after the original deadline.

This policy does not apply to students enrolled in the Graduate Diploma in Legal Practice.

*Approved by the Board of Studies-Graduate Program in Law meeting no.4/2002 held on 04/07/02 revised 10/12/02;
revised: Postgraduate Studies Committee (PSC) 10/08/05*

This was correct at the time of printing, for future updates please see: <http://law.anu.edu.au/Postgraduate/Policies.asp>

ENVIRONMENTAL LAW PROGRAM

The Environmental Law program produces graduates with the legal understanding necessary to enable a critical analysis and application of environmental law and policy. It is designed to meet the professional development needs of decision makers and policy makers in business and government. These participants include: policy makers, NGOs, consultants, researchers and academics, corporate lawyers, barristers, local authorities and practitioners. There are two coursework programs in Environmental Law and Policy: one for students who have a law degree and one for graduates of disciplines other than law.

Convenor: Prof. Tim Bonyhady

Programs offered:

Program	Program Code	Background
Master of Laws specialising in Environmental Law	7300SENVL	Lawyers
Master of Environmental Law	7309XMENVL	Non-Lawyers
Graduate Diploma in Law specialising in Environmental Law	6300SENVL	Lawyers
Graduate Diploma in Environmental Law	6309XGDENV	Non-Lawyers
Graduate Certificate in Environmental Law	6351XGCEL	Lawyers and Non-Lawyers

Program Requirements:

The master degrees require courses totalling 48 units, with at least 36 units from the environmental law courses listed, including Fundamentals of Environmental Law (non-lawyers).

The graduate diplomas require courses totalling 36 units, with at least 24 units from the environmental law courses listed, including Fundamentals of Environmental Law (non-lawyers).

The graduate certificates require courses totalling 24 units, with ALL units from the environmental law courses listed, including Fundamentals of Environmental Law (non-lawyers).

The following courses are offered in Environmental Law. Please note not all courses will be offered every year:

*All courses are 6 units unless specified

American Model of Environmental Law, The	LAWS8130
Australian Climate Law	LAWS8181
Biodiversity Law and Policy	LAWS8280
Business Strategy and Environmental Responsibility	LAWS8110
Culture of Environmental Law	LAWS8151
Environment, Business and Regulation	LAWS8111
Environmental and Risk Assessment Law	LAWS8145
Environmental Dispute Management	LAWS8278
Environmental Landuse Planning Law	LAWS8146
Environmental Litigation	LAWS8187
Environmental Responsibilities of Local Governments	LAWS8114
Federalism and the Environment	LAWS8117
Forestry Law	LAWS8185
Fundamentals of Environmental Law	LAWS8189 (compulsory for non-lawyers)
Graduate Research Unit (Environmental Law)	LAWS8303 (Masters only – 12 units)
Indigenous Peoples and Environmental Law	LAWS8152
International Climate Law	LAWS8180
International Law of the Environment	LAWS8264
Marine and Coastal Law	LAWS8129
Natural Resources Law and Policy	LAWS8108
Pollution Law	LAWS8173
Site Contamination Law	LAWS8186

Special Topics in Environmental Law:	LAWS8291
Trade and the Environment	LAWS8113
Water Resources Law	LAWS8123

American Model of Environmental Law, The LAWS8130

Units:	6
Hours:	26 hours intensive delivery
Specialisation:	Environmental Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Professor Tim Bonyhady / Professor Bill Andreen

Objectives: To provide an introduction to key aspects of US environmental law because of its profound influence on Australian environmental law over the last forty years

Content: This course will look at key pieces of US legislation – the National Environmental Policy Act, Clean Water Act, Endangered Species Act and 'Superfund' Act – and consider the American response to Kyoto. In doing so, it will not only examine the legislation and case law but also explore larger debates about federalism, regulation and enforcement and relate this American experience to Australian law.

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Australian Climate Law LAWS8181

Units:	6
Hours:	26 hours intensive delivery
Specialisation:	Environmental Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Ian Macintosh / James Prest

Content: This course will examine climate law in Australia including not only the current state of the law but also its likely future direction.

Topics include:

- The federal framework for climate law. Relevant provisions in Commonwealth environmental impact assessment law.
- State laws applying to emissions reduction and avoidance in the energy, transport, building sectors and provisions in planning and environmental impact assessment laws.
- The rise of climate litigation.
- Energy and energy efficiency laws relating to coal, gas, nuclear, and renewable sources.
- Possible responses to the problem including market mechanisms, information based regulation, voluntary approaches, legislative approaches to emissions reduction. The course will pay particular attention to proposed carbon trading regimes. The inter-relationship between a cap-and-trade scheme and existing and potential regulatory regimes such as mandatory renewable energy legislation will be considered.
- Climate liability and climate adaptation including the impact of climate change on planning regimes and the approval practices of coastal local governments.

Many of the topics above will be presented drawing on international comparisons with the domestic law of other jurisdictions including the United States and the EU.

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Biodiversity Law and Policy

LAWS8280

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Dr James Prest

Objectives: Loss of biodiversity is one of the most serious environmental problems the world faces. The objective of this course is to describe, analyse and evaluate current legal regimes for biodiversity conservation. It also explores the policy issues that arise in relation to biodiversity conservation and examines the need for a broader policy mix.

Conventional legal approaches, based on setting aside special areas and regulation, often fail to grasp the implications of the problem and may need both to be reformed and complemented by other approaches, such as providing positive incentives, such as stewardship payments.

The course will provide a critical understanding of current legal issues relating to terrestrial biodiversity conservation and the design of appropriate policy responses, particularly in relation to private land.

Content: After outlining the ecological, scientific and socio-economic context in which biodiversity conservation is pursued, this course describes, analyses and evaluates current legal regimes for biodiversity conservation. It includes coverage of:

- International obligations
- Federal/state/local government division of responsibility
- Protected areas;
- Threatened species;
- Native vegetation conservation on private land;
- Private and public forestry
- Regulatory, voluntary and economic instruments;

The course also explores the policy issues that arise from current approaches and examines the need for a broader policy mix.

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Students are required to complete a piece of assessment prior to the commencement of intensive teaching.

Business Strategy and Environmental Responsibility

LAWS8110

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Professor Neil Gunningham

Objectives: This course examines the relationship between corporate environmental strategy and competitive advantage. It considers how business responds to the pressures of regulation, markets, financial institutions, consumers and NGOs, and how it can best design and implement proactive strategies that meet both short-term legal requirements and the long-term goal of sustainable business practice. The course complements Laws 8111, examining environmental strategy from a business perspective and its interactions with civil society and public and regulatory policy.

A participant who has successfully completed this course should be able:

- to explain the relationship between legal underpinnings, economic incentives, organisational structure, non-legal policy tools and decision-making processes;
- to describe and analyse key policy tools and processes relevant to environmental management and performance in the private sector; and

- to explore the role of organisational issues and key business strategies for engaging with environmental issues.
- To describe the importance to reputation-sensitive business of social licence and the inter-relationship between business and civil society, including business-NGO partnerships.

Content: Environmental concerns have a powerful (but within Australia, little understood) impact on business success. To maintain their competitive advantage, corporate managers must stay ahead of the curve, shifting their focus from environmental management to environmental strategy. This course is concerned with how business can and should respond to environmental challenges. New technologies, untapped markets and regulatory innovations all present business opportunities to be seized by companies with foresight. The question is *how* to turn environment to a strategic advantage. The course explores the effects of environmentalism on corporate management, examining recent thinking on the role of environment in business, how environmental forces are driving change, how best to respond to external pressures, and how business managers can think about environmental issues in a strategic way. In particular, how can business can best respond to the pressures of regulation, markets, financial institutions, consumers and NGOs? The course will be of particular value to business managers at all levels, to government officials, policymakers and regulators, to corporate environmental lawyers, to environment consultants, NGOs and to a variety of other environmental stakeholders.

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Culture of Environmental Law LAWS8151

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Professor Tim Bonyhady

Objectives: This course will examine Australian environmental law in its political, historical, literary and artistic contexts since the arrival of the First Fleet in 1788. Its aim is to explore the relationship between law and society, looking as broadly as possible across the culture. While its focus will be on Australia, it will include some comparative material, drawn especially from the United States of America, Great Britain and New Zealand.

Content: The topics to be covered will cross the full spectrum of environmental law. They will include questions of urban planning, forest protection, energy generation (especially hydro-electricity and nuclear power), cruelty to animals, wildlife protection, mining, pollution control and heritage protection.

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Environment, Business and Regulation LAWS8111

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law
Prerequisite:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Professor Neil Gunningham

Objectives: Describes the roles of and interaction between a diverse range of regulatory tools currently used to deliver environmental policy goals in Australia. These are compared to regulatory best practice internationally. Examination of how the "next generation" of environmental regulation and policy tools can be designed both to bring laggards up to the basic legal standard and to reward and facilitate leaders in going "beyond compliance".

A participant should be able:

- to identify the roles played by command and control regulation, market mechanisms, and a range of innovative alternatives, including informational regulation, co-regulation and economic instruments;
- to explore the role of voluntary, incentive-based and regulatory tools in regulating the behaviour of corporations; and
- to identify the core elements of best practice environmental regulation, the design principles necessary to achieve an optimal regulatory mix, and strategies to achieve a regulatory reconfiguration best suited to the needs of public policy and civil society in the early 21st century.

Content: Regulation is the most important single influence on corporate environmental behaviour and permeates all substantive areas of environmental law. This course examines the diverse range of instruments that currently make up the environmental policy-makers toolkit, and which shape environmental outcomes for both large and small business, including: (i) traditional regulatory instruments such as command and control regulation (ii) market based strategies such as pollution taxes and tradable permits (iii) 'next generation' approaches including information based regulation, environmental audit, environment management systems (including ISO 14001), regulatory flexibility initiatives, self and co-regulatory and voluntary agreements. It addresses both urban and rural issues. It shows why enterprises choose different strategies towards environmental regulation; why some increasingly choose to go "beyond compliance"; and how combinations of policy instruments can facilitate, encourage and reward sustainable business strategy and integrate environmental and economic performance. The course includes a variety of case studies and workshops, and is designed to complement [LAWS8110](#).

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Environmental & Risk Assessment Law

LAWS8145

Units:	6
Hours:	26 hours intensive delivery
Specialisation:	Environmental Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Judith Jones

Objectives: On completion of this course it is expected that students will be able to:

- explain, identify and critique environmental regulatory regimes dealing with science, risk, risk assessment and environmental impact assessment
- critically analyse the literature on 'regulatory science' and other forms of science provided in environmental regulatory regimes.
- understand and explain theoretical perspectives on the role and importance of science and scientific uncertainty (as compared to other factors) in decision-making within these regimes,
- understand, critique and apply the relevant law on the precautionary principle and related concepts within administrative law
- research scientific, socio-legal and legal databases to obtain literature relevant to environmental regulation
- present the findings of research as a well-reasoned paper in written (and possibly also oral) form.

Content: Selected topics include:

- Theories of environmental decision-making including the use of expert science in decision-making
- Political, administrative and institutional contexts
- Models of environmental regulatory regimes based on scientific information and the assessment of risk
(For example, environmental impact assessment, gene technology, hazardous chemicals, fisheries management regimes, forestry, endangered species).
- Sources of scientific uncertainty and standards of 'regulatory science'
- Theory, method and law of risk assessment
- Legislative standards of preventive and precautionary regulation
- Case law on standards of science

- The precautionary principle in international law and in international trade disputes
- Interpreting and implementing the precautionary principle in domestic law (threshold test and precautionary action)
- Scientific uncertainty, the precautionary principle, and the threshold test
- Legal and institutional reform.

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

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Students who have completed LAWS8279 Environmental Impact Assessment Law will need to seek permission from the lecturer to enrol in this course.

This course was previously known as LAWS8145 Science in Environmental Regulation.

Environmental Dispute Management **LAWS8278**

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law / LLM(LegPrac)
Prerequisite:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Justice Brian Preston

Objectives: The course is designed:

- To understand the nature and characteristics of environmental disputes
- to identify and discuss the different processes for dispute resolution, both internal and external to the court system
- to understand why and how effective dispute resolution can be better achieved by matching appropriate dispute resolution processes to the particular environmental dispute.

Content: This course covers the types of processes for resolving environmental disputes including adjudicative (such as litigation), consensual (such as mediation and negotiation) and managerial authority (such as determination by Ministers, government agencies and local councils and merit review of such determinations), as well as the forms in which such processes may be organised and conducted (eg for adjudication, whether adversarial or investigative; for managerial authority; and for consensual mechanisms, the manner in which negotiations and mediations should be conducted). Practical exercises enable the student to have a better appreciation of dispute resolution processes. The concept of a multi-door courthouse, where a variety of dispute resolution processes are offered under the one roof is explored.

Learning Outcomes: At the conclusion of the course students should be able to:

- Identify characteristics of environmental disputes of relevance to selecting appropriate dispute resolution processes
- understand the different types of dispute resolution processes and their strengths and weaknesses
- understand how different dispute resolution processes can be organised and conducted
- match appropriate dispute resolution processes to particular environmental disputes

Assessment: The proposed means of assessment includes a component of class participation (including practical exercises) and a research paper on a topic of relevance to environmental dispute management. Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Environmental Landuse Planning Law **LAWS8146**

NB: This course will be held at ANU House, Melbourne in 2009

ANU students who wish to enrol require a permission code, which can be obtained from pgadmin.law@anu.edu.au.

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Brad Jessup

Objectives: This course will examine planning and environmental assessment legislation, policy and case law in Victoria and other states and territories of Australia where pertinent. The role of various levels of government will be examined, including the division of powers between the Commonwealth, Victorian and local governments. While the teaching component of the course will be divided into a planning module and an environmental assessment module, the use of case studies and readings will draw together these two subsets of environmental law.

Within the planning module of the course consideration will be given to: the objectives of planning policy; balancing private and public interests; the role of law in achieving planning goals; planning instruments and regulatory mechanisms for implementing planning policies; the role of appellate courts and tribunals in reviewing planning decisions; and the rights and role of the community.

Within the environmental assessment module of the course particular emphasis will be given to the topic of procedural environmental impact assessment, including its origins, role and objectives. Consideration will also be given to the legal obligations to conduct environmental impact assessment. The course will include evaluation of the common criticisms of EIA regimes including issues raised by: allocation of extensive discretionary powers to the decision-maker; adequacy of provisions for community involvement; implications of proponent prepared environmental impact statements; and, the timing of assessment.

Learning Outcomes: At the conclusion of this course students should be able to:

- understand and explain the principles of planning;
- describe the planning and planning related functions of different levels of government;
- critically examine the role of law in achieving the objectives of planning policy and broader environmental objectives and the place for community in the planning process;
- understand and explain environmental impact assessment procedures (including under the Environment Protection and Biodiversity Conservation Act, and relevant state and territory legislation);
- identify the limitations and strengths of EIA regimes, particularly having regard to the role and contribution of the community to EIA; and
- present the findings of research in written form and logically and critically answer a problem question.

Assessment: The proposed means of assessment for this course will require students to undertake three pieces of assessment. Short research tasks will be required before and during the teaching component of the course and a more substantial piece of assessment (comprising both research and problem solving questions) will be required after the teaching component of the course. Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Incompatible: Students who have completed LAWS8279 Environmental Impact Assessment Law or LAWS8203 Environmental Landuse and Planning Law are not permitted to enrol in this course.

Environmental Litigation

LAWS8187

Units:	6
Hours:	26 hours intensive delivery

Specialisation: Environmental Law / LLM(LegPrac)
Prerequisites: Fundamentals of Environmental Law (non-lawyers)
Staff: Chris McGrath

Course Description: The course is designed:

- to provide an understanding of the theory and practice of environmental litigation in Australia; and
- to use scenario-based learning (i.e. active learning through problem-solving involving specific factual situations) to provide an integrated and practical knowledge of environmental litigation as a part of the environmental regulatory mix.

Course Syllabus: The course will cover the following topics:

1. The role of environmental litigation as part of a mix of environmental regulatory instruments and designing environmental policy
2. The role of lawyers in environmental litigation
3. Avoiding and narrowing litigation through good project planning, consultation, sound environmental management practices, and Alternative Dispute Resolution (ADR)
4. Common issues for environmental litigation (e.g. litigation strategies, the litigation process, use of expert witnesses)
5. Environmental litigation to enforce the law by private individuals using common law and statutory avenues
6. Environmental litigation against government decisions, both merits review and judicial review
7. Environmental litigation by government, including civil litigation and criminal prosecutions
8. Critical analysis of environmental litigation frameworks in Australia as part of an effective regulatory system.

Learning Outcomes: The major intended outcomes of the course are:

- To understand the purpose of litigation as part of the environmental policy mix.
- To understand the mechanics of the different types of environmental litigation, including private litigation, litigation against government decisions, and litigation by government.
- To be able to apply a knowledge of the theory and mechanics of environmental litigation to advising a client in practice.
- To be able to analyse critically the different frameworks for environmental litigation in Australia according to modern environmental regulatory design principles.

Assessment: It is expected the assessment for the course will be as follows:

1. A practical exercise involving either:

- (a) settling an advice on prospects of success and a Claim and Statement of a Claim for an injunction under s475 of the EPBC Act based on a given factual scenario; or
- (b) settling an advice on prospects of success and a Notice of Appeal against refusal of a planning application in the student's State or Territory based on a given factual scenario. (30%)

2. Writing a 6,000–8,000 word research paper relevant to the topic and the student's interests (70%).

Students must rely on the Approved Assessment which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Environmental Responsibilities of Local Governments **LAWS8114**

Units: 6
Hours: 26 (intensive delivery)
Specialisation: Environmental Law
Prerequisite: Fundamentals of Environmental Law (non-lawyers)
Staff: Dr Gerry Bates

Content: Government policy throughout Australia is implementing the old adage “think globally, act locally” by steadily transferring to local government responsibilities for environment protection which have previously been managed at State level; and by requiring increased effort and resources to be directed at local environmental problems. This course reviews the extent to which environment protection is

increasingly becoming the responsibility of local government and examines the nature of that responsibility in the context of legal obligations and policy requirements.

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Federalism and the Environment LAWS8117

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law
Prerequisite:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Mr Matthew Zagor

Objectives: A participant who has successfully completed this course should:

- have a sound foundation in the legal and the political aspects of environmental federalism in Australia.
- gain an appreciation of the history of legislative and executive practice and State-Federal relations since federation
- have an understanding of how the Australian constitutional system distributes and regulates power between the polities in Australia, and how this power distribution has been interpreted by the Court.
- appreciate the financial and political drivers which inform decisions and negotiations between the different levels of government on environmental matters.
- understand the mechanisms which inform the legal and political relationship between the states on environmental matters (eg tied grants, bi-lateral and intergovernmental agreements, trigger mechanisms for Commonwealth involvement, reference of powers under the Constitution).
- gain a practical understanding of how key pieces of legislation work to regulate State-Federal cooperation on environmental matters.

Content: This course is divided into three main parts. Part I provides an overview of the structure of environmental federalism from constitutional, historical and theoretical perspectives. Against this background, Part II allows students to consider several specific environmental regimes. Part III involves student presentation of topics assigned after the close of enrolments.

The course examines both the "legal" and the "political" Constitution as it has governed the distribution of responsibilities for environmental matters within the Australian Federal system of government. The division of legislative power between the Commonwealth and the States is the starting point. there then follows a detailed examination of legislative and executive practice over several distinct periods, culminating in present day divisions of environmental roles and responsibilities. The subject addresses several broad issues arising from the Australian experience including: first, the concept of subsidiarity (for which purpose a comparative approach is adopted, covering the European Union, the United States and Canada); second, the various techniques (both legislative and non-legislative) used to promote cooperative federalism in relation to environmental matters; and third, the specific problems arising in the application of State laws to activities of the Commonwealth or on Commonwealth places.

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Forestry Law LAWS8185

Units:	6
Hours:	26 hours intensive delivery
Specialisation:	Environmental Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers)

Staff: Rob Fowler

Course Description: The course will consider Australian forestry law in a comparative context. Specific aspects of Australian law will include: the role of the Commonwealth historically under the EPIP Act and currently under the EPBC Act; the purpose and effect of Regional Forestry Agreements and cases related thereto; forest tenures under State legislation; recent measures to separate title to embedded Co₂; and commercial and legal aspects of bio-sequestration projects. International dimensions will cover the Forestry Principles and other attempts to develop a global agreement; role of other MEA's - World Heritage Convention, Biodiversity Convention and CITES (re listing of ramin); the Forestry Stewardship Council accreditation scheme; the impact of GATT on trade-related measures; avoided deforestation (REDD) proposals in relation to climate change under the Bali Roadmap; and recent efforts to adopt international measures to restrict illegal trade in forest products. Finally, some comparison with other countries in terms of forest litigation will be offered - for example, the Philippines (Oposa's case); prosecutions for illegal forestry in Indonesia; and the Spotted Owl case in Oregon, USA.

Learning Outcomes: On satisfying the requirements for this course, students will have the knowledge and skills to:

- Analyse the legal framework within which forestry operations are undertaken in Australia;
- critique approaches to the implementation and enforcement of forestry law through a comparative analysis of various jurisdictions within and outside Australia; and
- evaluate the role of forestry-related initiatives in relation to the reduction of greenhouse gas emissions.

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Fundamentals of Environmental Law

LAWS8189

This course will be offered twice in 2009.

It will be offered in the Summer and Winter in Canberra.

Units: 6
Hours: 26 (intensive delivery)
Specialisation: Environmental Law
Prerequisites: none
Staff: Summer – Professor Tim Bonyhady; Winter – Dr Gerry Bates

Objectives: This course is designed to introduce students who have no legal qualifications to environmental law. In doing so, the course not only provides students with an understanding of general legal principles, methods and institutions but also provides them with a framework for understanding and analysing environmental law, taking a thematic approach rather than annotating the law of one jurisdiction. **Lawyers are not permitted to take this course.**

Content: This course examines aspects of the law that are of fundamental importance to the appreciation of the development of environmental policy and the design and enforcement of environmental law. Many different areas of environmental law will be used to illustrate important principles, including planning law, environmental impact assessment, pollution control, water law, and protection of biodiversity. The course will also include an introduction to principles of international environmental law. The main topics considered are:

- the origins and nature of environmental law
- fundamental influences in policy determination and law
- the significance of the common law and the importance of property rights and obligations
- international and European Community environmental law
- human rights and environmental democracy
- the power of the Commonwealth, the States and local government over environmental decision-making
- the structure and content of environmental legislation
- ecologically sustainable development

- powers and responsibilities of environmental managers
- review of environmental decisions
- enforcement of environmental regulation

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

NB This courses replaces LAWS8201 Fundamentals of Environmental Law (12 units) from 2009

Graduate Research Unit (Environmental Law) LAWS8303

Units: 12
Prerequisites: Enrolment in a Masters program; completion of at least 24 units at 70% average; approval from the Environmental Law coordinator.
Staff: Supervisor

Content: A research paper of 15,000 words in length on a topic within the Environmental Law specialisation. The topic must be approved by the Environmental Law coordinator and the appointed supervisor in consultation with the candidate. A more detailed guideline is available in the Law School Office.

Indigenous Peoples and Environmental Law LAWS8152

Units: 6
Hours: 26 (intensive delivery)
Specialisation: Environmental Law
Prerequisites: Fundamentals of Environmental Law (non-lawyers)
Staff: Matthew Zagor

Objectives: Social, political and legal developments in recent decades have led to greater recognition of Indigenous approaches to land and environmental management. This course will consider these developments, exploring the extent to which specific legal regimes recognise and give effect to Indigenous interests in land and resources, the manner in which they distribute power, and the different approaches taken to the sustainable management of competing interests in land and resources.

The course will build around crucial areas where Indigenous interests and land and environmental management law intersect - from hunting, fishing and mining on Indigenous land to the role which Indigenous knowledge plays in national park and natural resource management. These are key areas of contemporary interest and contention. In brief, the course aims to expose students to those parts of the law which Indigenous peoples can use to 'speak' for country and the intersection of these legal areas with environmental and land management regimes.

Contents: The course will examine key themes in native title and land rights, cultural heritage, protected areas and biodiversity conservation, and environmental planning and management.

The course will explore the following areas of contemporary social and political interest where Indigenous interests and environmental law and land management intersect:

- i) Ownership of and the sustainable use of wildlife on land and water (eg traditional rights to hunt dugong; commercial utilisation eg ecotourism.)
- ii) Sea rights (eg Indigenous peoples' rights to participate in and co-manage commercial fisheries; fishing rights under common law and legislation).
- iii) Mining, exploration and pastoral activities on Indigenous land (eg the ability to control access to land by mining companies where there is a native title claim; economic incentives).
- iv) Protected areas and Indigenous Interests (eg Bioregional planning in parks and protected areas; tracking the history of the wilderness concept that often involved dispossession to contemporary models of co-management).
- v) Agreement making and environmental management and their enforceability (eg the efficacy of Indigenous land use agreements).

- vi) The role of Indigenous knowledge (eg in natural resource management in national parks; fire management regimes).
- vii) Who can 'speak' for country (eg role of traditional knowledge, cultural heritage; how do 'communal property regimes' operate).

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

International Climate Law **LAWS8180**

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law; International Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers) or Principles of International Law (non-lawyers)
Staff:	Martijn Wilder

Objectives: This course will examine international climate law, examining both the current international legal frameworks and the negotiation of the future regime. The course will also explore fundamental questions about how international climate law interacts with national law and how private sector players participate in a global public international law regime. We will examine the effectiveness of the regime and what is required to achieve safe levels of anthropogenic emissions.

A participant who has successfully completed this course should have a sound understanding of legal issues, standards and principles relating to the international protection of climate and be familiar with the key international instruments and the international institutions (governmental and non-governmental) designed to address and implement measures aimed at climate change.

Topics include:

- An Overview of the climate problem and what drives the legal and policy response—especially looking at the work of the IPCC.
- An overview of international climate change law frameworks- UNFCCC, Kyoto Protocol and the Marrakesh Accords.
- Specific Focus on key market mechanisms under Kyoto: Emissions Trading, the Clean Development Mechanism and Joint Implementation.
- Technology Transfer.
- Avoided Deforestation and the REDD process.
- Domestic responses to implementing the international framework: the EUETS, the US, Australia, NZ.
- The international Negotiation Process: Bali, Poznan, Copenhagen and Beyond 2012
- Complimentary measures
- Negotiation exercise

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

International Law of the Environment **LAWS8264**

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law; International Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers) or Principles of International Law
Staff:	Tim Stephens

Course Description: This course introduces students to the nature of transboundary environmental challenges and the development of international norms and institutions to address them.

Fundamental issues addressed by the course include:

- the ethical framework for international environmental policies and laws,
- the origin and development of international environmental law,

- sources of international environmental law,
- actors in global environmental governance and the nature of international environmental norms.

Much of the course is devoted to specific subject areas of environmental governance such as:

- climate change,
- biodiversity and biosafety,
- marine environmental protection,
- the Antarctic environment,
- the implementation of international environmental law in Australia, and
- mechanisms for dispute settlement, compliance and enforcement.

Learning Outcomes: At the conclusion of this course students should:

- be able to engage critically with ethical debates surrounding environmental policy and law-making;
- understand the history and development of international environmental law as a distinct field of public international law;
- possess a thorough knowledge of the principles of international environmental law;
- possess a good knowledge of the main topic areas of international environmental law;
- understand the limits and utility of the norms relating to the global environment;
- appreciate the interaction and tension between various international actors and institutions in the development and implementation of international environmental norms; and
- be able to apply norms and principles of international environmental law in a problem-solving context.

Assessment: The proposed assessment for this course will comprise two compulsory items of assessment: (1) a short problem based assignment and (2) a lengthy research essay. Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Marine and Coastal Law

LAWS8129

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law; International Law
Prerequisite:	Fundamentals of Environmental Law (non-lawyers) or Principles of International Law
Staff:	Professor Don Rothwell

Objectives: This course is designed to provide participants with an understanding of the complexities of environmental regulation of the coastal and marine environment. Conceptually, the course is intended to move from the shore to the high seas, beginning with the foundations of coastal law and ending with recent marine pollution disasters.

Content:

- Ownership and Boundaries of Submerged Lands
- The Public Trust Doctrine
- Riparian Rights and the Navigational Servitude
- Public Access to the Shoreline
- Regulating Development in the Coastal Zone
- State Regulation of Fisheries and Indigenous Fishing Rights
- Commonwealth Regulation of Fisheries
- Admiralty Law
- Marine Pollution Law

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Natural Resource Law and Policy

LAWS8108

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Professor Gerry Bates

Objectives: The purpose of this course is to explore the development of government policy with respect to the environmental management of natural resources and analyse how effectively policy has been translated into environmental law. The course concentrates upon regulatory and incentive based approaches to natural resources management and explores the legal regimes that have been created to implement and enforce policy directions. Whilst the course adopts a whole of government, integrated approach to policy development and legal responses, it also tests policy design and implementation by taking a focused look at the management of particular natural resources; particularly those that are not dealt with in other options in the Environmental Law programme, such as fisheries and forests. This is an overview course that is intended to complement existing options in other law courses that deal specifically with the exploitation of natural resources by concentrating upon the environmental responsibilities of those who use and manage natural resources; and to complement those courses in the MEL programme that deal specifically with particular natural resources such as water as coastal issues.

Content: Particular objectives are to consider whether and how principles of integrated environmental management of natural resources are being recognised and progressed through existing policy design and legal responses: to what extent legal requirements for management rely on principles of ecologically sustainable development: to consider the range of management tools employed in natural resources legislation (such as strategic management planning, incentive based as well as regulatory mechanisms, licensing of activities, and agreements with private landowners): to consider legal obligations for environment protection that are part of natural resources decision-making: and to gain a broad overview of the systems for management of particular natural resources that are not currently covered by other specialist options; for example land degradation, fisheries, and forests.

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Pollution Law

LAWS8173

NB: This course will be held at ANU House, Melbourne in 2009

ANU students who wish to enrol require a permission code, which can be obtained from pgadmin.law@anu.edu.au.

Units:	6
Hours:	26 (intensive delivery)
Specialisation:	Environmental Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Prof Neil Gunningham

Objectives:

On completion of this course it is expected that students will be able to:

- comprehensively analyse the full range of pollution regimes existing in Australia
- understand and explain introductory theoretical concepts relating to pollution regulation design
- explain the inter-relationship between pollution control regimes and planning law
- critically analyse the role of the Federal, state/territory and local government in pollution control
- present the findings of research as a well-reasoned paper in written form.

Content: Topics include:

- History of pollution control
- Federal/state relations

- Land and marine based sources of pollution
- Environmental planning and pollution licensing
- Waste management
- Environmentally hazardous chemicals
- Contaminated lands
- Pollution and local government
- Remedies, compliance and enforcement.

Learning Outcomes: At the conclusion of this course students should be able to:

- demonstrate an understanding of the core principles of pollution law
- describe and analyse the pollution law regime and identify how important legal issues are addressed within it
- understand basic theoretical concepts relating to pollution regulation design
- understand the main policy issues relating to pollution law
- identify the main policy options for addressing both non-point and point source pollution and their strengths and weaknesses
- critically analyse the role of the Federal, state/territory and local government in pollution control

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Site Contamination Law

LAWS8186

NB: This course will be held at ANU House, Melbourne in 2009

ANU students who wish to enrol require a permission code, which can be obtained from pgadmin.law@anu.edu.au.

Units:	6
Hours:	26 hours intensive delivery
Specialisation:	Environmental Law
Prerequisites:	Fundamentals of Environmental Law (non-lawyers)
Staff:	Rob Fowler

Course Description: This course provides an introduction to the science of site contamination and the role of risk assessment in this context; the role of national policy and guidelines (ANZECC 1992 and 1999, and Assessment NEPM 1999, plus the current review thereof); role of the Commonwealth; examination of State legislation from a functional perspective (identification and Registers; investigation, assessment and remediation procedures; monitoring and reporting requirement); the role and responsibilities of environmental auditors; the application of land-use planning measures in the course of development control; the need for institutional controls to ensure long term stewardship; the finality of remediation efforts and capacity to transfer residual liability, civil liability for harm caused by contamination. conveyancing aspects (duty to disclose, Trade Practices Act). A brief comparison with approaches in overseas jurisdictions will also be provided - US Superfund, British and Canadian approaches, particularly with respect to brownfields schemes and the encouragement of voluntary cleanups.

Learning Outcomes: On satisfying the requirements for this course, students will have the knowledge and skills to:

- understand the scientific and technical elements of contaminated site assessment and remediation, including site-based risk assessment
- analyse the legal and policy framework within which contaminated site assessment and remediation is undertaken in Australia
- critique the legal and policy approaches to the cleanup of contaminated sites through a comparative analysis of jurisdictions within and outside Australia; and
- evaluate the effectiveness of current Australian approaches to contaminated site cleanup.

Assessment:

Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Special Topics in Environmental Law: LAWS8291

Units: 6
Hours: 26 (intensive)
Specialisation: Environmental Law
Prerequisites: Fundamentals of Environmental Law (non-lawyers)
Staff: TBA

Objectives:

This course is a 'hollow log' and the content may vary from year to year. It is designed to accommodate visiting lecturers or to trial a course before introducing it into the full curriculum.

Trade and the Environment LAWS8113

Units: 6
Hours: 26 (intensive delivery)
Specialisation: Environmental Law; International Law
Prerequisites: Fundamentals of Environmental Law (non-lawyers)
Staff: Associate Professor Jan MacDonald

Objectives: This course provides an understanding of the key relationships between trade and environment, and an understanding of environmental disputes in the WTO, trade-environment responses in regional trading groups, lessons for the MAI, and the relationship between trade and sustainability principles.

Content: The course begins by considering trade-environment interfaces – the effects of trade on the environment and the effects of environmental protection on trade. Macro issues are discussed with regard to free trade philosophy vs "limits to growth". National sovereignty vs right to trade; and trade as environmental incentives/deterrent are also addressed. The course provides an overview of international trade law framework at the international and domestic levels.

Environmental disputes in the WTO and international trade liberalisation regime are considered in relation to:

- GATT;
- The Agreement on Sanitary and Phytosanitary Standards;
- The Agreement on Technical Barriers to Trade;
- The Biodiversity Convention and the Agreement on Trade Related Aspects of Intellectual Property Rights; and
- The WTO Committee on Trade and Environment.

The course examines trade-environment responses in regional trade groups: the European Union; the North American Free Trade Agreement; and the Asia Pacific Economic Cooperation Forum.

Finally, lessons for the Multilateral Agreement on Investment are considered as well as the developing principles of sustainability in the multilateral trade and investment regime.

Assessment: Students must rely on the Approved Assessment, which will be posted to the course homepage on the ANU Law website, prior to the commencement of the course.

Water Resources Law LAWS8123

Units: 6
Hours: 26 (intensive delivery)

Specialisation: Environmental Law
Prerequisites: Fundamentals of Environmental Law (non-lawyers)
Staff: Alex Gardner

Course Description: This course is a study of Australian terrestrial water resources law, with a focus on the Murray-Darling Basin jurisdictions, including the Commonwealth. The Australian law of terrestrial water resources management was founded on the often-unsuitable common law principles inherited from England. It has undergone two major transitions through State legislative reforms; the first at the end of the nineteenth century and the second at the end of the twentieth century through the implementation of national water policy agreements made by the Council of Australian Governments ("CoAG"); namely, the 1994 Water Reform Framework Agreement and the 2004 "National Water Initiative". In 2007, Prime Minister Howard's "A National Plan for Water Security" led to the enactment of the *Water Act 2007* (Cth), the first significant Commonwealth water resources legislation with substantive effect. The new Rudd Labor Government re-launched national water policy under the badge "Water for the Future" and, on 3 July 2008, signed, with the other Murray-Darling Basin jurisdictions, the Agreement on Murray-Darling Basin Reform, which will involve amendments to the the *Water Act 2007* (Cth).

The evolving national water policy means that water resources law, although largely State based, has common streams of legal principle that flow through the various States' legal regimes and the new *Water Act* (Cth). The course addresses those principles under the following five topics, which are considered at a three days intensive workshop:

- The Institutional Framework of water resources management, including the classification and condition of Australia's water resources, key constitutional principles and administrative agencies, and the statutory objectives of water resources management;
- Property Rights to Water, including the foundations of property rights to water, their historical basis in the common law and current statutory public and private rights to the use and flow and control of surface and ground water;
- Water Allocation Planning, including the history and legal purposes of planning, the main procedures of the planning system, and the core content of water plans relating to environmental water allocations and the concept of "consumptive pool";
- Administration of Statutory Water Entitlements, including the grant, variation and transfer of entitlements; and
- Catchment Management, including the National Water Quality Management Strategy and State policy and statutory bases of catchment management for the conservation of water resources and protection of water quality, especially in public water supply source areas.

Learning Outcomes: At the conclusion of this course students should be able to:

- understand and explain the main legal principles governing the management of water resources in their own jurisdictions and make some comparisons with other jurisdictions;
- ascertain the legal effect of the national water policy reforms agreed by CoAG and implemented by State and Commonwealth legislation;
- identify and use the principal legal and policy materials applied in the management of water resources in their own jurisdiction; and
- comment critically on the law and policy relevant to a particular problem of water resources management that was the focus of the research assignment.

Assessment: The scheme of assessment is expected to be three compulsory assessment exercises;

- a pre-workshop assignment of approx 800 words on national water policy, commenced 6 weeks before the workshop and to be submitted on-line to the WebCT site, assessed on a pass / fail basis;
- a presentation at the workshop on a question chosen from a prescribed list, usually relating to an important case, institution or principle, commenced 3 weeks before the workshop; and
- a large research assignment undertaken in a period of 6 weeks after the workshop on a question of the student's choice in consultation with the lecturer.

Students must rely on the Approved Assessment which will be posted to the course homepage on the [ANU Law website](#), prior to the commencement of the course.

Other Information: This course will commence on WebCT on 16 September 2009, prior to the intensive component. Logon to WebCT at: <http://webct.anu.edu.au/login/> using your ISIS username and password. The intensive component of the course will run from 28 to 30 October 2009. Enrolments will be accepted up to 16 September 09 (the start date for WebCT).