



LAW 858

Pollution, Law and Environmental Management

S2 External 2014

Dept of Law

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General Information

Unit convenor and teaching staff

Unit Convenor

Zada Lipman

zada.lipman@mq.edu.au

Contact via zada.lipman@mq.edu.au

By arrangement via e-mail

Credit points

4

Prerequisites

Admission to MEnvLaw or PGDipEnvLaw or PGCertEnvLaw or MEnvMgt or PGCertEnvMgt or LLM in Environmental Law or 42cp in LAW units at 400 or 500 level or (admission to JD and 32cp in LAW units at 800 level)

Corequisites

Co-badged status

Unit description

The unit evaluates the policy and legislative approaches to pollution control. It provides an introduction and background to pollution law and policy with a focus on the evolution of contemporary regulation and management. Consideration will be given to the role of ecologically sustainable development in pollution control and the application of ESD principles by the New South Wales Land and Environment Court. Particular issues explored include: common law remedies; criminal liability; corporate and directors' liability; due diligence; economic instruments; waste management and contaminated land. Comparative approaches from other jurisdictions will be used to evaluate the efficacy of current Australian and New South Wales policy and management.

Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

Learning Outcomes

On successful completion of this unit, you will be able to:

1. Demonstrate a thorough understanding of the basic principles and policies underlying pollution law, and how they may be used to achieve environmental goals.
8. Analyse hypothetical legal problem situations and formulate and present appropriate

oral and written arguments in response.

2. Understand the historical, philosophical and contextual background of pollution law as well as the current system of pollution law in NSW.
3. Possess the conceptual frameworks for analysing the adequacy of our legal system in this field.
4. Examine the evolution of pollution law and make some assessment of how it can be expected to develop in the future having regard to the objectives of sustainable development.
5. Construct and evaluate arguments about the effectiveness of pollution law having regard to the challenges of enforcement and compliance.
6. Make recommendations for law reform and/or further research needed to address cross cutting issues.
7. Critically analyse cross-cutting and emerging interdisciplinary issues in pollution law such as contaminated land issues, product stewardship, corporate social responsibility and market mechanisms.

General Assessment Information

Both assignments are to be submitted through Turnitin on the due date. On the same day, you should mail a hard copy of the assignment to the convener (E/Prof Zada Lipman). The Turnitin copy is your receipt of posting the assignment on the due date and also a method of preventing plagiarism by assessing the copied content of the paper. The Turnitin copy will not be marked. The hard copy will be marked and returned to you with comments within 2 weeks of submission. Please enclose a stamped addressed envelope so that the marked hard copy can be mailed directly to you without delay.

Extensions will not be granted for work related reasons and students are expected to plan their program to ensure work can be completed on time. A medical certificate must be provided for an extension to be granted and must be obtained prior to the submission date. Late work without an extension, will incur a penalty. During the first week the penalty will be 10% of the marks allocated to the assignment and 20% for work submitted in the second week. Work submitted after that date will not be accepted.

Attendance at the OCS is compulsory and students should attend all 3 days of the session.

Assessment Tasks

Name	Weighting	Due
<u>Theoretical Assignment</u>	35%	Friday 17 October 2014

Name	Weighting	Due
<u>Presentation & Participation</u>	15%	25-27 September
<u>Research Assignment</u>	50%	Thursday 20 November 2014

Theoretical Assignment

Due: **Friday 17 October 2014**

Weighting: **35%**

Choice of one from two set questions. Written essay based upon first 4 weeks of readings. Involves a more theoretical, conceptual evaluation rather than a doctrinal analysis.

Length: 2,000 words.

On successful completion you will be able to:

- 1. Demonstrate a thorough understanding of the basic principles and policies underlying pollution law, and how they may be used to achieve environmental goals.
- 2. Understand the historical, philosophical and contextual background of pollution law as well as the current system of pollution law in NSW.
- 3. Possess the conceptual frameworks for analysing the adequacy of our legal system in this field.
- 4. Examine the evolution of pollution law and make some assessment of how it can be expected to develop in the future having regard to the objectives of sustainable development.

Presentation & Participation

Due: **25-27 September**

Weighting: **15%**

Students are required to select one of the topics in the OCS Guide and prepare a 15 minute presentation for delivery in that session, ideally with power point overheads. The presentation need not be original but must be based on the readings for that topic. Students should email their choice of topic to the Unit Convenor, which will be approved subject to a satisfactory spread of topics. 10% of marks will be allocated for the presentation and it is a *compulsory* component of the unit. 5% is allotted for class participation.

On successful completion you will be able to:

- 1. Demonstrate a thorough understanding of the basic principles and policies underlying pollution law, and how they may be used to achieve environmental goals.
- 2. Understand the historical, philosophical and contextual background of pollution law as

well as the current system of pollution law in NSW.

- 3. Possess the conceptual frameworks for analysing the adequacy of our legal system in this field.
- 4. Examine the evolution of pollution law and make some assessment of how it can be expected to develop in the future having regard to the objectives of sustainable development.
- 5. Construct and evaluate arguments about the effectiveness of pollution law having regard to the challenges of enforcement and compliance.
- 6. Make recommendations for law reform and/or further research needed to address cross cutting issues.
- 7. Critically analyse cross-cutting and emerging interdisciplinary issues in pollution law such as contaminated land issues, product stewardship, corporate social responsibility and market mechanisms.

Research Assignment

Due: **Thursday 20 November 2014**

Weighting: **50%**

Written essay on a set topic or on a research topic of student's choice. Students are free to choose any topic for research provided it is relevant to LAW858. The assignment should involve independent research, critical analysis and an analytic approach to the issues raised. An abstract of the proposed research paper is to be submitted for the approval of the convenor before 17 October. There will be an opportunity for discussion at the OCS session. For students who prefer a set question, there is a choice of questions, including a problem question. Length of assignment: 3,500 words.

On successful completion you will be able to:

- 8. Analyse hypothetical legal problem situations and formulate and present appropriate oral and written arguments in response.
- 5. Construct and evaluate arguments about the effectiveness of pollution law having regard to the challenges of enforcement and compliance.
- 6. Make recommendations for law reform and/or further research needed to address cross cutting issues.
- 7. Critically analyse cross-cutting and emerging interdisciplinary issues in pollution law such as contaminated land issues, product stewardship, corporate social responsibility and market mechanisms.

Delivery and Resources

There are no lectures throughout the semester other than the material on the ilearn website.

There will be a combination of formal lectures, powerpoint presentations, class presentations by students and workshops at the OCS.

Reading List

Every student must acquire a copy of the textbook, which will be used throughout the semester:

- Lyster R, Lipman Z, Franklin N, Wiffen G & Pearson L, *Environmental and Planning Law in NSW*, Sydney: The Federation Press, 3rd ed, 2012.

Other essential reading is listed below and will be available on the web or from the University Library E-Reserve.

You can use journal finder function to find most of the articles

http://www.mq.edu.au/on_campus/library/research/journalfinder/

- Bates G, *Environmental Law in Australia* (7th ed) LexisNexis 2010, pp 45-74.
- Bricknell S, *Environmental Crime in Australia: AIC Report 109*, Australian Government, Australian Institute of Criminology, 2010 at <http://www.aic.gov.au/documents/2/1/1/%7B211B5EB9-E888-4D26-AED4-1D4E76646E4B%7Drpp109.pdf>.
- Cole, D H, *Pollution and Property*, Cambridge University Press, (2002), Ch 4
“Institutional and Technological Limits of Mixed Property/Regulatory Regimes, pp 1-19
- Grabosky, P and Braithwaite, G, *Of Manners Gentle*, Oxford, 1986, pp 38 49.
- Hardin, G, “The Tragedy of the Commons,” (1968) 162 *Science* pp 1243-1248 at http://www.geo.mtu.edu/~asmayer/rural_sustain/governance/Hardin%201968.pdf.
- Hawkins, R, *Environment and Enforcement: Regulation and the Social Definition of Pollution*, Clarendon Press, Oxford, 1984, pp 1 – 15.
- Lipman Z & Farrugia M, “Obligation to Report and Manage Pollution Incidents (2013) 18 LGLJ 18-30.
- Lipman Z, “Environmental Crime and Enforcement in Australia”, (July 2013) *Australian Environment Review*, pp 580-584.
- Lipman and Ind, “The E-Waste Dilemma: Are International Measures and Product Stewardship Schemes a Solution?”, (2014) 31 *Environmental and Planning Law Journal*, 223-235.
- Livingstone M L, “Culpability versus Liability”, (2013) 18 *Environmental and Planning Law Journal* pp 74-90.
- Lundgren K, “The Global Impact of E-Waste: Addressing the Challenge”, ILO 2012 at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_196105.pdf.
- “Infringements and Prosecutions,” Office of Environment and Heritage, Department of

Premier and Cabinet, *Annual Report 2012 – 2013*, pp 262-267 at http://www.environment.nsw.gov.au/resources/whoweare/deccwar0910appsindexes_10900.pdf.

- Hon Justice Pepper and Gates L, “Sentencing for Environmental Offences: Tougher Penalties and Alternative Sentencing Options, (2012) 27(10) *Australian Environment Review*, LexisNexis 357 - 364
- Preston, Hon Justice B, “Ecologically Sustainable Development in the Context of Contaminated Land”, (2008) 25 *Environmental and Planning Law Journal* 164 – 181.
- Sayre, FB, “Public Welfare Offences”, (1933) 33 *Columbia Law Review* pp 55 - 84 at <http://www.doc88.com/p-1083922353738.html>.
- *Protection of the Environment Operations Act 1997* available on AUSTLII: www.austlii.edu.au/
- *Contaminated Land Management Act 1997 (NSW)* at www.austlii.edu.au
- *SEPP 55 – Remediation of Land (NSW)* at www.austlii.edu.au
- DUAP/EPA, “Managing Land Contamination: Planning Guidelines SEPP 55 – Remediation of Land

Unit Schedule

Week 1

Introduction to unit

Required reading:

Lyster et al, Federation Press (3rd 2012), Ch 1, pp 22-38.

Hawkins, R, *Environment and Enforcement: Regulation and the Social Definition of Pollution*, Clarendon Press, Oxford, 1984, pp 1 – 15.

Hardin, G, “The Tragedy of the Commons,” (1968) 162 *Science* 1243-1248.

Cole, D H, *Pollution and Property*, Cambridge University Press, (2002), Ch 4 “Institutional and Technological Limits of Mixed Property/Regulatory Regimes, pp 1-19.

Week 2

Historical Background to Pollution & Regulation

Required reading:

Grabosky, P and Braithwaite, G, *Of Manners Gentle*, Oxford, 1986, pp 38-49.

Sayre, F B, "Public Welfare Offences", (1933) 33 *Columbia Law Review* 55-84.

"Infringements and Prosecutions," Office of Environment and Heritage, *Annual Report* (2012-2013) pp 262-267.

Week 3

The Role of the Common Law

Required reading:

Lyster et al, Ch 1, pp 1-15.

Bates G, *Environmental Law in Australia* (7th ed) LexisNexis 2010, pp 45-74

Week 4

The Role of the Commonwealth

Required reading:

Lyster et al, Ch 1, pp 15-22; Ch 13, pp 532-534.

Week 5

Contaminated Land

Required reading:

Lyster et al, Ch 14, pp 651-670.

Livingstone M L, "Culpability versus Liability", (2013) 18 *Environmental and Planning Law Journal* pp 74-90.

Preston, Hon Justice B, "Ecologically Sustainable Development in the Context of Contaminated Land", (2008) 25 *Environmental and Planning Law Journal* 164-181.

Week 6

Administrative Remedies

Required reading:

Lyster et al, Ch 13, 534-554.

Week 7

Criminal Liability

Required reading:

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Lyster et al, Ch 13, pp 554-589.

Lipman Z & Farrugia M, "Obligation to report and manage pollution incidents" (2013) 18 LGLJ 18-30.

Lipman Z, "Environmental Crime in Australia", (July 2013) *Australian Environment Review* 580-584.

Week 8

Enforcement and Sentencing

Required reading:

Lyster et al, Ch 13, pp 590-606.

Hon Justice Pepper and Gates L, "Sentencing for Environmental Offences: Tougher Penalties and Alternative Sentencing Options, (2012) 27(10) *Australian Environment Review* 357-364.

Week 9

Waste Management

Required reading:

Lyster et al, Ch 14, pp 626, 635-651.

Week 10

Product Stewardship

Required reading:

Lyster et al, Ch 14, pp 627-635.

Lipman and Ind, "The E-Waste Dilemma: Are International Measures and Product Stewardship Schemes a Solution?", (2014) 31 *Environmental and Planning Law Journal*, 223-235.

Lundgren K, "The Global Impact of E-Waste: Addressing the Challenge", ILO 2012 at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_196105.pdf.

Week 11

Economic Incentives

Required reading:

Lyster et al, Ch 13 605-611.

Lipman Z & Bates G, *Pollution Law in Australia*, LexisNexis Butterworths 2002, pp 49-88.

Week 12

Strategies for Managing Chemicals

Required reading:

Lyster et al, Ch 15, pp 673-715.

Week 13

Corporate Social Responsibility

Required reading:

Lyster et al, Ch 16, pp 728-767.

Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](#). Students should be aware of the following policies in particular with regard to Learning and Teaching:

Academic Honesty Policy http://mq.edu.au/policy/docs/academic_honesty/policy.html

Assessment Policy <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy <http://mq.edu.au/policy/docs/grading/policy.html>

Grade Appeal Policy <http://mq.edu.au/policy/docs/gradeappeal/policy.html>

Grievance Management Policy http://mq.edu.au/policy/docs/grievance_management/policy.html

Disruption to Studies Policy http://www.mq.edu.au/policy/docs/disruption_studies/policy.html *The Disruption to Studies Policy is effective from March 3 2014 and replaces the Special Consideration Policy.*

In addition, a number of other policies can be found in the [Learning and Teaching Category](#) of Policy Central.

Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: https://students.mq.edu.au/support/student_conduct/

Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

Learning Skills

Learning Skills (mq.edu.au/learningskills) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

Student Enquiries

For all student enquiries, visit Student Connect at ask.mq.edu.au

IT Help

For help with University computer systems and technology, visit <http://informatics.mq.edu.au/help/>.

When using the University's IT, you must adhere to the [Acceptable Use Policy](#). The policy applies to all who connect to the MQ network including students.

Graduate Capabilities

PG - Discipline Knowledge and Skills

Our postgraduates will be able to demonstrate a significantly enhanced depth and breadth of knowledge, scholarly understanding, and specific subject content knowledge in their chosen fields.

This graduate capability is supported by:

Learning outcomes

- 1. Demonstrate a thorough understanding of the basic principles and policies underlying pollution law, and how they may be used to achieve environmental goals.
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Assessment tasks

- Theoretical Assignment
- Presentation & Participation

- Research Assignment

PG - Critical, Analytical and Integrative Thinking

Our postgraduates will be capable of utilising and reflecting on prior knowledge and experience, of applying higher level critical thinking skills, and of integrating and synthesising learning and knowledge from a range of sources and environments. A characteristic of this form of thinking is the generation of new, professionally oriented knowledge through personal or group-based critique of practice and theory.

This graduate capability is supported by:

Learning outcomes

- 1. Demonstrate a thorough understanding of the basic principles and policies underlying pollution law, and how they may be used to achieve environmental goals.
- 8. Analyse hypothetical legal problem situations and formulate and present appropriate oral and written arguments in response.
- 3. Possess the conceptual frameworks for analysing the adequacy of our legal system in this field.
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Assessment tasks

- Theoretical Assignment
- Presentation & Participation
- Research Assignment

PG - Research and Problem Solving Capability

Our postgraduates will be capable of systematic enquiry; able to use research skills to create new knowledge that can be applied to real world issues, or contribute to a field of study or practice to enhance society. They will be capable of creative questioning, problem finding and problem solving.

This graduate capability is supported by:

Learning outcomes

- 1. Demonstrate a thorough understanding of the basic principles and policies underlying pollution law, and how they may be used to achieve environmental goals.
- 8. Analyse hypothetical legal problem situations and formulate and present appropriate oral and written arguments in response.
- 5. Construct and evaluate arguments about the effectiveness of pollution law having regard to the challenges of enforcement and compliance.
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Assessment tasks

- Theoretical Assignment
- Presentation & Participation
- Research Assignment

PG - Effective Communication

Our postgraduates will be able to communicate effectively and convey their views to different social, cultural, and professional audiences. They will be able to use a variety of technologically supported media to communicate with empathy using a range of written, spoken or visual formats.

This graduate capability is supported by:

Learning outcomes

- 8. Analyse hypothetical legal problem situations and formulate and present appropriate oral and written arguments in response.
- 5. Construct and evaluate arguments about the effectiveness of pollution law having regard to the challenges of enforcement and compliance.
- 6. Make recommendations for law reform and/or further research needed to address cross cutting issues.

Assessment tasks

- Theoretical Assignment
- Presentation & Participation
- Research Assignment

PG - Engaged and Responsible, Active and Ethical Citizens

Our postgraduates will be ethically aware and capable of confident transformative action in relation to their professional responsibilities and the wider community. They will have a sense of connectedness with others and country and have a sense of mutual obligation. They will be able to appreciate the impact of their professional roles for social justice and inclusion related to national and global issues

This graduate capability is supported by:

Learning outcome

- 6. Make recommendations for law reform and/or further research needed to address cross cutting issues.

Assessment task

- Presentation & Participation

PG - Capable of Professional and Personal Judgment and Initiative

Our postgraduates will demonstrate a high standard of discernment and common sense in their professional and personal judgment. They will have the ability to make informed choices and decisions that reflect both the nature of their professional work and their personal perspectives.

This graduate capability is supported by:

Learning outcomes

- 1. Demonstrate a thorough understanding of the basic principles and policies underlying pollution law, and how they may be used to achieve environmental goals.
- 3. Possess the conceptual frameworks for analysing the adequacy of our legal system in this field.
- 4. Examine the evolution of pollution law and make some assessment of how it can be expected to develop in the future having regard to the objectives of sustainable development.
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Assessment tasks

- Presentation & Participation
- Research Assignment