



GSE 801

Environmental Law and Policy

S1 Evening 2015

Department of Geography and Planning

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Disclaimer

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General Information

Unit convenor and teaching staff

Unit convenor

John Whitehouse

[john](#)

Contact via jfwhitehouse@bigpond.com

off campus

Please email

Administrator

Wendy Goldstein

wendy.goldstein@mq.edu.au

Contact via 9850 6299

E8A 372

by appointment

Sara Fuller

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Credit points

4

Prerequisites

Admission to MEnv or PGDipEnv or PGCertEnv or MEnvEd or PGDipEnvEd or PGCertEnvEd or MEnvMgt or PGCertEnvMgt or MEnvStud or PGDipEnvStud or MEnvPlan or MEnvSc or MPP or PGDipPP or MSusDev or PGDipSusDev or PGCertSusDev or MClimCh or MWldMgt or PGDipWldMgt or PGCertWldMgt or MMarScMgt or MSc in (Remote Sensing and GIS or Environmental Health) or PGDipSc in (Remote Sensing and GIS or Environmental Health) or PGCertSc in (Remote Sensing and GIS or Environmental Health) or GradDipEnv or GradDipSusDev or GradCertSusDev or GradCertEnvPlan or MConsBiol or GradDipConsBiol

Corequisites

Co-badged status

Unit description

This unit provides an introductory overview to environmental law at an international, Commonwealth and New South Wales level. The subject of environmental law covers a wide area including: natural resources management, nature conservation, land use and town planning, local government, pollution and heritage. The unit provides a basic understanding of environmental law to students from a broad range of disciplines. The unit will assist students in understanding the legal framework affecting all environmental practitioners and bring an understanding of the policies underlying environmental law.

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:

An introductory understanding of environmental law and policy at an international, Australia and New South Wales level.

An understanding of the principles and theoretical basis of environmental law.

An overview of the subject suitable for professionals practising in the area of environmental management who are not lawyers.

A practical understanding of the role of environmental law in the context of environmental decision-making

Students will be able to communicate their understanding in written reports and essays and be able to make cogent arguments about environmental law in a debate

Able to Critically analyse cases and real life development problems

Able to analyse a factual situation and identify potential solutions

Able to employ innovative approaches to resolve environmental problems

General Assessment Information

Assignments are to be handed to the Unit Convenor in class and submitted electronically to Turnitin.

PLEASE NOTE: In order to successfully complete this unit students must:

- attend at least 80% of scheduled lectures;
- attend and participate in all class discussions and activities;
- complete all assignments or other assessment;
- reach a satisfactory postgraduate level of achievement in such assignments or other assessment as may be determined by the Head of the Department

There is no formal examination for this unit.

Unit assessment will consist of four elements: a written case commentary (10%) a written assignment (40%), an essay (40%), and class assessment (10%). Grades will be determined based on your overall performance and not merely your total marks. An especially poor performance in one of the assessment components would normally preclude the award of a higher grade. Late submission of assessment elements will incur penalties unless supported by a proper medical excuse.

Assignment should meet the writing standards of the GSE Writing Guide that is uploaded to the ilearn site.

Assignments that are overdue or involve plagiarism will attract marking penalties

The two major assignments are designed to develop problem-solving skills for a development problem and to provide a choice of research topics for detailed consideration and original analysis.

Feedback on student assignments will be provided in written comments on assignments. Additionally a Model Answer will be provided for Assignment 3. It is anticipated feedback will be provided 2 weeks after an assignment's due date

Assessment Tasks

Name	Weighting	Due
<u>Assignment 1</u>	10%	March 31
<u>Assignment 2</u>	40%	April 28
<u>Assignment 3</u>	40%	June 2nd
<u>Class Assessment 4</u>	10%	N/A

Assignment 1

Due: **March 31**

Weighting: **10%**

Written component (short commentary on set readings)

Length: 1500 words

Assignment 1 is designed to ensure students develop skills to read, analyse and understand court judgments. Given the significant number of court judgments reviewed in this unit, a sound understanding of how to read, analyse and assess judgments is a fundamental skill.

Note further details and reading will be provided to enrolled students

On successful completion you will be able to:

- An introductory understanding of environmental law and policy at an international, Australia and New South Wales level.
- An understanding of the principles and theoretical basis of environmental law.
- Students will be able to communicate their understanding in written reports and essays and be able to make cogent arguments about environmental law in a debate
- Able to analyse a factual situation and identify potential solutions

Assignment 2

Due: **April 28**

Weighting: **40%**

An essay on one of a range of topics on environmental law and policy.

Length: 3000 words

Assignment 2 provides an opportunity for students to specialise and explore in depth a specific area of their choice from a number of essay questions. It is designed to develop research and analysis skills in a policy area and provide an opportunity for original thought.

Note further information on this assessment and references will be provided to enrolled students.

On successful completion you will be able to:

- An introductory understanding of environmental law and policy at an international, Australia and New South Wales level.
- An understanding of the principles and theoretical basis of environmental law.
- Students will be able to communicate their understanding in written reports and essays and be able to make cogent arguments about environmental law in a debate
- Able to analyse a factual situation and identify potential solutions
- Able to employ innovative approaches to resolve environmental problems

Assignment 3

Due: **June 2nd**

Weighting: **40%**

The assignment involves preparing advice on the application of environmental legislation to particular development proposal

Length: 3,000 words

Assignment 3 provides an opportunity to advise on a specific development problem to develop

skills in working with NSW planning law including the *Environmental Planning and Assessment Act* and environmental planning instruments.

More information and reading will be provided to students enrolled in the course.

On successful completion you will be able to:

- An understanding of the principles and theoretical basis of environmental law.
- An overview of the subject suitable for professionals practising in the area of environmental management who are not lawyers.
- Students will be able to communicate their understanding in written reports and essays and be able to make cogent arguments about environmental law in a debate
- Able to Critically analyse cases and real life development problems
- Able to analyse a factual situation and identify potential solutions
- Able to employ innovative approaches to resolve environmental problems

Class Assessment 4

Due: **N/A**

Weighting: **10%**

Participation in allocated class debate plus satisfactory class attendance (a minimum of 80% attendance)

Class Assessment provides an opportunity to develop oral presentation and argument skills for a particular policy question, while class attendance and participation is designed to demonstrate a student's active engagement in the unit.

On successful completion you will be able to:

- An introductory understanding of environmental law and policy at an international, Australia and New South Wales level.
- An understanding of the principles and theoretical basis of environmental law.
- An overview of the subject suitable for professionals practising in the area of environmental management who are not lawyers.
- A practical understanding of the role of environmental law in the context of environmental decision-making
- Able to employ innovative approaches to resolve environmental problems

Delivery and Resources

LECTURERS

The principal lecturer and course developer is

Mr John Whitehouse LL.B (Syd), BA (Syd), BSc (Macq), Grad Dip Leg Pr (UTS); Partner, Minter Ellison Solicitors, Visiting Fellow of the Graduate School of the Environment, Macquarie University. Associate, Department of Classics and Ancient History, Sydney University.

with guest lectures from

Mr Simon Ball, LL.B. (Hons 1) (UTS), B.Eng Civil and Environmental (Hons 2) (UTS), Grad. Dip. Leg. Pr., Partner, Minter Ellison

Dr James Smith, Legal Counsel, Transport for NSW. Accredited Specialist (Local Government & Planning Law), LLB (Hons 1) (UTS), B.Sc (Hon1) (UNSW), Ph.D (UNSW).

Mr Luke Walker, B.A. (Hons) (ANU), LL.B (Hons) (ANU), Grad Dip Leg Pr (COL), Senior Associate, Minter Ellison Solicitors

Contact John Whitehouse for all class and assessment enquiries via email to jfwhitehouse@bigpond.com

CLASSES

The unit will consist of thirteen sessions each of three hours duration. Attendance at each session is compulsory and constitutes part of the class assessment mark for the unit. After a couple of settling in weeks, each session will comprise initial student presentations/debates of a maximum of sixty minutes in total, followed by a short break, before returning to a mixture of lecture and class discussion. Preparation for each session is expected and will be assumed.

Sessions are from **6.30 pm to 9.30 pm**.

The unit, although about the law, is not designed as a course for lawyers, but is one designed to provide a basic understanding of environmental law to students from a broad range of disciplines. Today the law impinges significantly on environmental management, and the course will assist students in understanding the legal framework affecting all environmental practitioners, irrespective of their core discipline.

The unit additionally seeks to bring an understanding of the policies underlying environmental law.

Given the broad range of topics covered in the unit, the coverage will of necessity be introductory. However the unit adopts a case-based approach, examining the operation of the law through decisions of superior courts in Australia. Active student participation in and preparation for each session is required.

READING: Required and Recommended texts and/or materials Textbooks

It is recommended that students purchase the following textbook for this course:

John Whitehouse, *Development and Planning Law in New South Wales*, CCH Australia Ltd, North Ryde, 2012.

The Unit Outline on ilearn contains a comprehensive reading list of articles, cases and book extracts.

Unit participants are required to obtain the key NSW legislative provisions covered in the unit:

- *Environmental Planning and Assessment Act, 1979 as amended*
- *Environmental Planning and Assessment Regulation, 2000 as amended*

Copies of this legislation (included all amendments) may be downloaded from the internet (<http://www.legislation.nsw.gov.au>).

General Texts

In addition there are a number of additional texts covering the subject matter of this course. None of these additional texts is required to be purchased by students. Many of these texts are now out of date in view of recent legislative changes. Students may wish to refer to these texts for an initial overview of some topics, general principles or for additional information and references. Care must be taken however to check primary sources (legislation and case law) referred to in the texts since all commentary is quickly dated to the extent that it relies on such sources.

These additional texts are as follows:

Gerry Bates, *Environmental Law in Australia* (8th ed, Lexis Nexis Butterworths, 2013)

David Farrier and Paul Stein (eds), *Environmental Law Handbook - Planning and Land Use in New South Wales* (5th ed, 2011, Thomson Reuters)

Doug Fisher, *Australian Environmental Law* (2003)

Zada Lipman and Gerry Bates, *Pollution Law in Australia* (Lexis Nexis Butterworths, 2002)

Ben Boer and Graeme Wiffen, *Heritage Law in Australia*, Oxford University Press, South Melbourne, 2006.

Rosemary Lyster, Zada Lipman, Nicola Franklin, Graeme Wiffen and Linda Pearson, *Environmental and Planning Law in New South Wales*, Third Edition, Federation Press, Sydney, 2012.

Leslie A. Stein, *Principles of Planning Law*, Oxford University Press, South Melbourne, 2008.

Lee Godden and Jacqueline Peel, *Environmental Law. Scientific, Policy and Regulatory*

Dimensions, Oxford University Press, South Melbourne, 2010.

Australian & Australian-related Journals

Environmental and Planning Law Journal, Thomson Lawbook Company

Local Government Law Journal, Thomson Lawbook Company

National Environmental Law Review (formerly *Environmental Law News*), National Environmental Law Association (NELA)

Australasian Journal of Natural Resources Law & Policy, Centre for Natural Resources Law and Policy, Faculty of Law, University of Wollongong

Legal Services

The following legal services comprise loose leaf up to date versions of the relevant statutory provisions together with commentaries and annotations on the particular provisions:

Planning and Development Service, New South Wales, Lawbook Co, 4 Loose Leaf Volumes (Annotated)

Local Government Planning and Environment Service New South Wales, 4 Loose Leaf Volumes, Lexis Nexis

Land and Environment Court Law and Practice, Law Book Co.

Legislation

The following New South Wales legislation and regulations (as amended) will be especially important for the course and each student should obtain a copy (as indicated under "Textbooks" above):

Environmental Planning and Assessment Act, 1979

Environmental Planning and Assessment Regulation, 2000

Law Reports

The following are the series of authorised law reports, which will be referred to during this course.

Local Government Reports of Australia (LGRA) Volumes 1 - 77 (Land and Environment Court Judges)

Local Government and Environment Reports of Australia (LGERA) Volume 78 onwards (continuing on from the LGRA)

Australian Planning Appeal Decisions (APA) Volumes 1 - 41 (Land and Environment Court Assessors), discontinued from 1992

Web-based Resources

The Library has Law database facilities that contain Law Reports, legislation, digests of legal

developments, abstracts and full-texts of articles, etc. at

<http://www.lib.mq.edu.au/databases/>. Choose database by area of study e.g. law, or by the name of specific database e.g. Lexis, or general topic.

NSW legislation (including Acts, Regulations and Environmental Planning instruments) are available off the NSW legislation website. <http://www.legislation.nsw.gov.au/>

All NSW Court decisions including Land and Environment Court decisions are available on the NSW Caselaw website. <http://www.caselaw.nsw.gov.au>.

Other legislation and court judgments are available on the Austlii website at: <http://www.austlii.edu.au>.

A very important web based legal research tool is the LawCite site at <http://www.lawcite.org/>. LawCite provides details of where a case has been cited in subsequent cases and hence assists in considering whether a case has been followed, overturned or modified by subsequent decisions.

Note that earlier court judgments may not be on the Web, but are found in the printed authorised law reports.

The Law Cite website (<http://www.lawcite.org/>) provides an invaluable research tool, particularly for locating cases and finding where a case has been considered in other cases.

NSW Government Gazettals, the current status of legislative Bills, and links to parliamentary law-making elsewhere in Australia and overseas are available at: <http://www.pco.nsw.gov.au/>.

Other useful sites are:

<http://www.nsw.gov.au> (The NSW Government website)

<http://www.planning.nsw.gov.au> (Department of Planning and Infrastructure website)

<http://www.environment.nsw.gov.au> (NSW Office of Environment and Heritage website)

<http://www.epa.nsw.gov.au/> (NSW Environment Protection Authority website)

<http://www.water.nsw.gov.au> NSW Office of Water website)

<http://www.australia.gov.au/KSP/> (Commonwealth Government website)

<http://www.aph.gov.au/library/intguide/law/austlaw.htm> (Australian Parliamentary Library law internet resources)

<http://www.environment.gov.au/> (Commonwealth Department of Environment website)

<http://www.dfat.gov.au/> (Department of Foreign Affairs and Trade website)

<http://www.eisil.org/index/> (International environmental law)

<http://www.edo.org.au/> (Environment Defender's Office)

<http://www.ecolex.org/> (Gateway to international environmental law resources)

Environmental Planning Instruments

During the unit, a sample of environmental planning instruments will be examined. Copies of these documents will be provided as required or references to websites.

Many environmental planning instruments are on the NSW legislation website (<http://www.legislation.nsw.gov.au/>) or the Austlii website, (http://www.austlii.edu.au/au/legis/nsw/consol_reg/).

Library Research Skills

Web-based Resources:

The Library provides access to Law databases that contain Law Reports, legislation, digests of legal developments, abstracts and full-texts of articles, etc. You can find these through Multisearch http://multisearch.mq.edu.au/primo_library/libweb/action/search.do;jsessionid=E2E61E0D527AAEFAD64C0422995B1695?mode=Basic&vid=MQ&tab=databases&.

Choose your area of study from the drop-down menu e.g. Law or Environment, or general topic Multi-subject or format eg. Newspapers, Theses etc or search for the name of a specific database e.g. LexisNexis.

If you need physical or electronic items not held at Macquarie, you can request them from another library through an Interlibrary Loan: http://www.mq.edu.au/on_campus/library/borrowing/borrowing_from_other_libraries/

Library Research Skills:

The Library provides support for library research skills. You can find these:

1. Online in the Subject Guides <http://libguides.mq.edu.au/home> Note particularly the guides for: Law, Environmental Science, Environmental Law, and Bibliographic Software (EndNote for Law <http://libguides.mq.edu.au/content.php?pid=114111&sid=1012048>

See also the Library Guide for Environmental Law at <http://libguides.mq.edu.au/law-environmental>.

2. For training for individuals or groups please contact the Research Librarian in your subject area:

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

Law Research Librarians: Catie Croaker: (catie.croaker@mq.edu.au) or Melinda Stewart (Melinda.stewart@mq.edu.au).

3. For more information, the ideal is - Contact the Research Librarians - Use the Ask A Librarian service <http://www.libanswers.mq.edu.au/>

Other Resources

The details of readings for each class are provided to enrolled students through ilearn.

Technology

Internet access and computer are required to access the ilearn site, which holds additional information on readings for each session and assessments, web based documents, and law databases

Unit Schedule

UNIT STRUCTURE

The unit will consist of thirteen sessions each of three hours duration. Attendance at each session is compulsory and constitutes part of the class assessment mark for the unit. After a couple of settling in weeks, each session will comprise initial student presentations/debates of a maximum of sixty minutes in total, followed by a short break, before returning to a mixture of lecture and class discussion. Preparation for each session by at least reading the Essential Readings is expected and will be assumed. Sessions are from 6.30 pm to 9.30 pm in E3B 117 Tute Room.

Tea and coffee will be provided during the break, but students should bring their own cup if they wish to have tea and coffee.

PLEASE NOTE: In order to successfully complete this unit, students must attend at least 80% of scheduled lectures.

UNIT SCHEDULE

Week	Date	Topic
1	February 24	Law and the legal system
2	March 3	What is environmental law and policy?
3	March 10	International environmental law
4	March 17	Commonwealth environmental law
5	March 24	Environmental planning instruments
6	March 31	Development assessment process Assignment 1 due – hand to unit convenor in class
		MID-SEMESTER BREAK 3-20 APRIL
7	April 21	Applying planning instruments

8	May 28	Environmental Impact Assessment Assignment 2 due – hand to unit convenor
9	May 5	Existing uses and Inquiries
10	May 12	Land management, conservation and cultural heritage law
11	May 19	Environmental protection (pollution control) legislation
12	May 26	Environmental protection and waste administration
13	June 2	Land and Environment Court Assignment 3 due – hand to unit convenor

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/

Results

Results shown in *iLearn*, or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit ask.mq.edu.au.

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 - 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

- An introductory understanding of environmental law and policy at an international, Australia and New South Wales level.
- An understanding of the principles and theoretical basis of environmental law.
- An overview of the subject suitable for professionals practising in the area of environmental management who are not lawyers.
- A practical understanding of the role of environmental law in the context of environmental decision-making
- Students will be able to communicate their understanding in written reports and essays

and be able to make cogent arguments about environmental law in a debate

- Able to Critically analyse cases and real life development problems
- Able to analyse a factual situation and identify potential solutions
- Able to employ innovative approaches to resolve environmental problems

Assessment tasks

- Assignment 2
- Assignment 3
- Class Assessment 4

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

- An introductory understanding of environmental law and policy at an international, Australia and New South Wales level.
- An understanding of the principles and theoretical basis of environmental law.
- An overview of the subject suitable for professionals practising in the area of environmental management who are not lawyers.
- A practical understanding of the role of environmental law in the context of environmental decision-making
- Able to Critically analyse cases and real life development problems
- Able to analyse a factual situation and identify potential solutions
- Able to employ innovative approaches to resolve environmental problems

Assessment tasks

- Assignment 1
- Assignment 2
- Assignment 3
- Class Assessment 4

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

- An introductory understanding of environmental law and policy at an international, Australia and New South Wales level.
- An understanding of the principles and theoretical basis of environmental law.
- An overview of the subject suitable for professionals practising in the area of environmental management who are not lawyers.
- A practical understanding of the role of environmental law in the context of environmental decision-making
- Able to Critically analyse cases and real life development problems
- Able to analyse a factual situation and identify potential solutions
- Able to employ innovative approaches to resolve environmental problems

Assessment tasks

- Assignment 2
- Assignment 3
- Class Assessment 4

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

- An overview of the subject suitable for professionals practising in the area of environmental management who are not lawyers.
- A practical understanding of the role of environmental law in the context of environmental decision-making
- Able to Critically analyse cases and real life development problems
- Able to analyse a factual situation and identify potential solutions
- Able to employ innovative approaches to resolve environmental problems

Assessment tasks

- Assignment 1

- Assignment 2
- Assignment 3
- Class Assessment 4

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

- Students will be able to communicate their understanding in written reports and essays and be able to make cogent arguments about environmental law in a debate
- Able to Critically analyse cases and real life development problems
- Able to analyse a factual situation and identify potential solutions

Assessment tasks

- Assignment 1
- Assignment 2
- Assignment 3
- Class Assessment 4

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 outcomes

- An understanding of the principles and theoretical basis of environmental law.
- An overview of the subject suitable for professionals practising in the area of environmental management who are not lawyers.
- A practical understanding of the role of environmental law in the context of environmental decision-making
- Able to Critically analyse cases and real life development problems
- Able to employ innovative approaches to resolve environmental problems

Assessment task

- Assignment 3

Changes from Previous Offering

Comparison to 2014

In 2014, GSE801 has a similar structure and content, but is updated to take account of recent policy and legislative changes and recent judicial decisions