



LAW 857

Environmental Litigation and Mediation

S2 External 2015

Dept of Law

Contents

<u>General Information</u>	2
<u>Learning Outcomes</u>	2
<u>Assessment Tasks</u>	3
<u>Delivery and Resources</u>	4
<u>Unit Schedule</u>	7
<u>Policies and Procedures</u>	11
<u>Graduate Capabilities</u>	13

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General Information

Unit convenor and teaching staff

Unit Convenor

Judith Preston

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Contact via judith.preston@mq.edu.au

N/A

By Appointment

Credit points

4

Prerequisites

Admission to MEnvLaw or PGCertEnvLaw or PGDipEnvLaw or MIntEnvLaw or PGCertIntEnvLaw or PGDipIntEnvLaw or LLM or 42cp in LAW units at 400 or 500 level or (admission to JD and 32cp in LAW or LAWS units at 800 level)

Corequisites

Co-badged status

Unit description

The unit will critically examine the adversarial and consensual modes of dispute resolution in the environmental context. The nature and scope of environmental disputes will be explored. The unit includes a consideration of international approaches to and institutions for environmental dispute resolution. The New South Wales Land and Environment Court will provide a focus for analysis of evidence and procedure. Comparative approaches from other jurisdictions with respect to litigation and public participation will be discussed. Mediation and other consensual approaches to environmental decision making will also be examined.

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:

Demonstrate an understanding of the history and context of environmental dispute resolution (EDR).

Demonstrate an understanding of the theoretical basis of EDR.

Critically analyse the role various mechanisms and state and non-state actors in EDR.
Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.
Identify the emerging trends and influences shaping EDR.
Propose solutions and reform for the EDR process.
Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting
Engage in a practical problem-based EDR exercise

Assessment Tasks

Name	Weighting	Due
Quiz	20%	Wednesday 23 September 2015
EDR Practice Exercise	20%	Wednesday 30 September 2015
Research Paper	60%	Monday 9 November 2015

Quiz

Due: **Wednesday 23 September 2015**

Weighting: **20%**

There will be a short quiz consisting of multiple choice and short answer questions designed to test your understanding of the basic concepts of the unit and to provide early feedback. This quiz is will be available from 9:00am on Monday 21st of September. It is due by 12:00am on Wednesday 23rd of September 2015.

On successful completion you will be able to:

- Demonstrate an understanding of the history and context of environmental dispute resolution (EDR).
- Demonstrate an understanding of the theoretical basis of EDR.

EDR Practice Exercise

Due: **Wednesday 30 September 2015**

Weighting: **20%**

Students will prepare a short document for litigation - such as an originating application - before a relevant Court or Tribunal in NSW based on a fact scenario. The application will be limited to, say, four pages (with details given at the OCS).

On successful completion you will be able to:

- Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.
- Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting
- Engage in a practical problem-based EDR exercise

Research Paper

Due: **Monday 9 November 2015**

Weighting: **60%**

Students are to complete an independent research paper on a topic of their choice related to this Unit. This task allows students to undertake in depth research and analysis of a specific aspect of litigation and mediation. A brief outline of the research question and structure of the paper should be submitted to the Convenor for approval by the **close of the OCS on 18 September 2015**. This is to ensure that the topic is suitable and the structure and content appropriate.

The paper should be well structured including sub-headings where appropriate. The introduction should set out the scope of the paper. You need to include sufficient detail of the specific legal principles or regime and analysis/application of that law. Your conclusion should include recommendations for new law, law reform, further research and/or creative application of the existing law where appropriate. The essay should be fully referenced according to the Australian Guide to Legal Citation. [Maximum Word Length 4000 words.]

On successful completion you will be able to:

- Demonstrate an understanding of the history and context of environmental dispute resolution (EDR).
- Demonstrate an understanding of the theoretical basis of EDR.
- Critically analyse the role various mechanisms and state and non-state actors in EDR.
- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.

Delivery and Resources

Technology used and Required:

This unit will use: iLearn accessed at <http://ilearn.mq.edu.au>

Times and Locations for Lectures and Tutorials:W6B

tutorial Room 336 on each day of the OCS

Teaching and Learning Strategy:

This course will be delivered as an intensive unit from Thursday October 2-Saturday October 4, 2014 between 9.00-5.00pm.

The course will be delivered in lectures with provision for class discussions. All students are expected to reread the reading materials provided on Ilearn and refer to texts recommended prior to the commencement of the OCS.

The moot exercise will be conducted as a group task. The task will be marked as a group task.

For current updates, lecture times and classrooms please consult the MQ Timetables website:

<http://timetables.mq.edu.au>

Information:

Required and recommended resources:

Prescribed

There is no prescribed textbook. All materials for this unit are on e-reserve or accessible via the internet.

The Reading List, with details of the materials, is provided on ILearn.

Recommended

In addition to the set reading there are a range of textbooks available from the university library which

you may find useful or if you wish to do some extra reading on a particular topic. The following list is not exhaustive and a search of the library catalogue may reveal other useful texts.

For students new to the study of law we recommend:

Michelle Sanson, David Worswick and Thalia Anthony, *Connecting with Law* (Oxford University Press, 2009).

Trischa Mann (ed), *Australian Law Dictionary* (Oxford University Press, 2009).

The following text is an excellent aid for academic writing and university study in general:

Jean Brick, *Academic Culture: A Students Guide to Studying at University*(NCELTR Publications,2009)

Other relevant texts include:

L S Bacow and M Wheeler, *Environmental Dispute Resolution* (Plenum Press, 1984).

Gerry Bates, *Environmental Law in Australia*, (LexisNexis Butterworth's, 8th ed, 2013)

U Beyerlin, et al (eds), *Ensuring Compliance with Multilateral Environmental Agreements: A Dialogue between Practitioners and Academia* (Martinus Nijhoff Publishers, 2006).

D E Fisher, *Australian Environmental Law* (Lawbook,2014).

Michael Freeman, *Alternative Dispute Resolution* (New York University Press, 1995).

Rosemary Lyster, et al, *Environmental and Planning Law in NSW* (Federation Press, 2013).

Brian J Preston, *Environmental Litigation* (Law Book, 1989).

Roger Sidaway, *Resolving Environmental Disputes: From Conflict to Consensus* (Earthscan, 2005).

Tania Sourdin, *Alternative Dispute Resolution* (Thomson Reuters, 4th ed, 2012).

David Spencer and Samantha Hardy, *Dispute Resolution in Australia: Cases, Commentary and Materials* (Thomson Reuters, 2nd ed, 2009).

David Spencer, *Essential Dispute Resolution* (Cavendish Publishing, 2nd ed,2005)

Michael Legg(ed),*The Future of Dispute Resolution*, (Lexis Nexis Butterworths,2013)

(Please note that in consulting these texts they should be read carefully because subsequent developments may mean the text no longer reflects the current law.)

Some useful journals are:

Australasian Dispute Resolution Journal

Environmental and Planning Law Journal

Commercial Dispute Resolution Journal

International Journal of Sociology and the Law

Journal of Dispute Resolution

Journal of environmental law and litigation

Journal of International Arbitration

Local Government Law Journal

Negotiation Journal

Ohio State journal on dispute resolution

Pepperdine dispute resolution law journal

Willamette journal of international law and dispute resolution

Websites:

Austlii - www.austlii.edu.au

Land and Environment Court of NSW - <http://www.lawlink.nsw.gov.au/lec>

Environmental Defenders Office - <http://www.edo.org.au>

Changes since the last offering of the Unit:

There is no assessment for class participation.

Other Material:

There are comprehensive reading materials available for this unit on ILearn.

Unit Schedule

Day 1 of the OCS – 16 September 2015

9.00-10.30

1 Introduction – Administration, Introductions, Course Aims and Themes

2 Characteristics of Environmental Disputes

10:30-11.00

Morning Tea Break

11:00-12:30

3 Overview of Environmental Dispute Mechanisms

- Litigation
- Conciliation
- Mediation

4 Overview of the Court System & Tribunals

The Judicial System – Hierarchy etc

Specific bodies:

- Land & Environment Court
- Federal Court
- Court of Appeal
- Local Court
- Tribunals
- Administrative Appeals Tribunal
- NSW Civil and Administrative Tribunal
- Planning & Assessment Commission
- Case Study – Planning & Assessment Commission v Land & Environment Court

12:30-1.30

Lunch

1:30-3.00

5 Types of Environmental Disputes - Merits Review, Judicial

Review and Civil Enforcement

3:00-3:30

Afternoon Tea

3:30-5:00

6 Remedies

- Merits - approve, approve with conditions, overturn
- Judicial Review – void & remit
- Civil Enforcement – injunction, declaration, Court thinks fit
- Criminal – fine, gaol
- Additional Court Orders – restoration & remediation, publicity, payment to environmental organisation
- Common law – damages, prohibition, certiorari, mandamus
- Discretion

Day 2 of the OCS - 17 September 2015

9.00-10.30

7 Limitations

- Merits – costs, limited availability
- Judicial review - privative clause, costs, decision-maker can remake
- Civil Enforcement – investigative powers
- Case Studies
 - Judicial review – Carlton United Brewery case, Catherine Hill Bay case
 - Merits – Bulga, Gerroa or Ulan, Newcastle Speleological, Ashton
 - Civil Enforcement – Delta, Maules Creek
 - Mediation – Yass, Dargues Reef

10:30-11.00

Morning Tea Break

11:00-12:30

8 Overview of public interest litigation

- Standing
- Security for Costs
- Costs – Protective Costs Orders, Public Interest Test
- Undertaking for damages
- Expert /Concurrent evidence
- Legal Aid
- Specialist Court – public interest and accessibility mandate, public interest jurisprudence
- SLAPP Suits

12:30-1.30

Lunch

1:30-3.00

9 From Genesis to Judgment – Practicing in the Land & Environment Court

3:00-3:30

Afternoon Tea

3:30-5:00

10 Litigation – Guest Lecturer: A Barrister’s Perspective on Advocacy (TBC)

Day 3 of the OCS - 18 September 2015

9.00-10.30

11 Overview of Mediation/Conciliation

- Theory & Principles
- In Practice – NCAT, LEC
- Case Studies

10:30-11.00

Morning Tea Break

11:00-12:30

12 Mediation – Mediating in Environmental Disputes: Lessons, Tips & Pitfalls (TBC)

12:30-1.30

Lunch

1:30-3.00

13 International Developments

- International Tribunals
- Specialist Courts in other Jurisdictions
- Case Study – Whales Litigation

14 Future trends

3:00-3:30

Afternoon Tea

3:30-5:00

15 Science in the Court Room

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.

Extensions and penalties for late submission

There may be circumstances to warrant late submission of written assessments or attend classes in the OCS. If students wish to obtain an extension of time or exemption from attendance in any part of the OCS, a written application must be made with appropriate written evidence in support, to the Convener at least one before the due date.

Failure to submit work on time or attend class in the OCS without written approval may be grounds for failure to satisfactorily complete the requirements of the unit and may result in an "F" grade.

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

- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.
- Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting
- Engage in a practical problem-based EDR exercise

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

- Demonstrate an understanding of the history and context of environmental dispute resolution (EDR).
- Demonstrate an understanding of the theoretical basis of EDR.
- Critically analyse the role various mechanisms and state and non-state actors in EDR.
- Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.

- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.
- Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting
- Engage in a practical problem-based EDR exercise

Assessment tasks

- Quiz
- Research Paper

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

- Propose solutions and reform for the EDR process.
- Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting
- Engage in a practical problem-based EDR exercise

Assessment tasks

- Quiz
- EDR Practice Exercise
- Research Paper

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

- Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.

- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.
- Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting
- Engage in a practical problem-based EDR exercise

Assessment task

- EDR Practice Exercise

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 outcome

- Engage in a practical problem-based EDR exercise

Assessment tasks

- EDR Practice Exercise
- Research Paper

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

- Overview the court practice and procedure especially in the Land and Environment Court of NSW and apply this knowledge to a factual scenario.
- Identify the emerging trends and influences shaping EDR.
- Propose solutions and reform for the EDR process.
- Evaluate EDR problems with a solutions-based method to gain skills within a group-based learning setting

Assessment task

- Research Paper