



LAW 858

Pollution, Law and Environmental Management

S2 Block 2016

Dept of Law

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Disclaimer

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General Information

Unit convenor and teaching staff

Unit Convener

E/Prof Zada Lipman

zada.lipman@mq.edu.au

Contact via 0425204405

contact 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 or 42cp in LAW or LAWS 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 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:

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

Analyse hypothetical legal problem situations and formulate and present appropriate oral and written arguments in response.

Understand the historical, philosophical and contextual background of pollution law as well as the current system of pollution law in NSW.

Possess the conceptual frameworks for analysing the adequacy of our legal system in this field.

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.

Construct and evaluate arguments about the effectiveness of pollution law having regard to the challenges of enforcement and compliance.

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

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 e-mail a 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 essay will be marked and returned to you with comments within 2 weeks of submission.

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. In the absence of a successful application for special consideration due to a disruption to studies, any assessment task submitted after its published deadline will not be graded and will receive a mark of zero. Applications for a Disruption to Studies are made electronically via ask.mq.edu.au and should be accompanied by supporting documentation. Students should refer to the Disruption to Studies policy for complete details of the policy and a description of the supporting documentation required.

Word limits will be strictly applied and work above the word limit will not be marked.

All assessments in the unit are to be submitted electronically. Plagiarism detection software is used in this unit.

Attendance at the OCS is compulsory and students should attend the 2 days of the session and should be prepared to participate in class discussion.

Assessment Tasks

Name	Weighting	Due
<u>Theoretical Assignment</u>	35%	14/10/2016
<u>Research Assignment</u>	50%	11/11/2016
<u>Presentation</u>	15%	17-18 September 2016

Theoretical Assignment

Due: **14/10/2016**

Weighting: **35%**

Choice of one from two set questions. Written essay based upon first 6 weeks of readings.

Involves a more theoretical, conceptual evaluation rather than a doctrinal analysis.

On successful completion you will be able to:

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- 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.

Research Assignment

Due: **11/11/2016**

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 30 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.

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- Critically analyse cross-cutting and emerging interdisciplinary issues in pollution law such as contaminated land issues, product stewardship, corporate social responsibility and market mechanisms.

Presentation

Due: **17-18 September 2016**

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.

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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, 4th ed, 2016.

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/

- Brandon E J, "A Model Law for Site Contamination: Key Features and Challenges in a Developing Country Context", (2015) 32 Environmental and Planning Law Journal 409-436.
- 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), pp 1-19.
- Grabosky, P and Braithwaite, G, Of Manners Gentle, Oxford, 1986, pp 38-49.
- Hamilton M, "'Restorative Justice Activity' Orders; Furthering Restorative Justice Intervention in an Environmental & Planning Law Context?", (2015) 32 Environmental and Planning Law Journal 548-561.
- 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.
- Lindsay B and Riebl C, "'Risk-based Regulation' in Environmental Governance", (2013) 30 Environmental and Planning Law Journal 452-466.
 - Lipman Z & Farrugia M, "Obligation to Report and Manage Pollution Incidents" (2013) 18 Local Government Law Journal 18-30.
 - Lipman Z, "Environmental Crime and Enforcement in Australia", (July 2013) Australian Environment Review, pp 580-584.
 - Lipman Z and Ind M, "The E-Waste Dilemma: Are International Measures and Product Stewardship Schemes a Solution?", (2014) 31 Environmental and Planning Law Journal, 223-235.
 - Lipman Z, "Trade in Hazardous Waste" in 'International Environmental Law and the Global South', (eds) S Alam, S Atapattu, C Gonzalez, J Razzaque (Cambridge University Press, (2015), pp 256-276.
 - 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.
 - Martin R, "Natural Capital Risk Management: Regulating the Main Externalities of Business", (2015) 32 Environmental and Planning Law Journal 505-533.
 - NSW EPA Annual Report 2014 – 2015, pp 56-67 at <http://www.epa.nsw.gov.au/resources/epa/150848-epa-annual-report.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.
 - Pillai S & Williams G, "Commonwealth Power and Environmental Management: Constitutional Questions Revisited" (2015) 32 Environmental and Planning Law Journal 393-408.
 - Preston, Hon Justice B, "Ecologically Sustainable Development in the Context of Contaminated Land", (2008) 25 Environmental and Planning Law Journal 164 – 181.
 - Preston, Hon Justice B, "Economic Valuation of the Environment", (2015) 32 Environmental and Planning Law Journal 301-326.
 - Roach M, "Can 'Risk-based Regulation' Help Increase Public Confidence in the EPA? An Evaluation of NSW Environmental Licensing Reforms", (2015) 32 Environmental and Planning Law Journal 346-360.

- 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 at 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 at www.austlii.edu.au.

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

New Assessment Policy in effect from Session 2 2016 http://mq.edu.au/policy/docs/assessment/policy_2016.html. For more information visit http://students.mq.edu.au/events/2016/07/19/new_assessment_policy_in_place_from_session_2/

Assessment Policy prior to Session 2 2016 <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy prior to Session 2 2016 <http://mq.edu.au/policy/docs/grading/policy.html>

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

Complaint Management Procedure for Students and Members of the Public http://www.mq.edu.au/policy/docs/complaint_management/procedure.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://www.mq.edu.au/about_us/offices_and_units/information_technology/help/.

When using the University's IT, you must adhere to the [Acceptable Use of IT Resources 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

- 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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- Understand the historical, philosophical and contextual background of pollution law as well as the current system of pollution law in NSW.
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- Construct and evaluate arguments about the effectiveness of pollution law having regard to the challenges of enforcement and compliance.
- Make recommendations for law reform and/or further research needed to address cross cutting issues.
- Critically analyse cross-cutting and emerging interdisciplinary issues in pollution law such as contaminated land issues, product stewardship, corporate social responsibility and market mechanisms.

Assessment tasks

- Theoretical Assignment
- Research Assignment
- Presentation

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

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- Understand the historical, philosophical and contextual background of pollution law as well as the current system of pollution law in NSW.
- Possess the conceptual frameworks for analysing the adequacy of our legal system in this field.
- 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.

- 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
- Research Assignment
- Presentation

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

- 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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market mechanisms.

Assessment tasks

- Theoretical Assignment
- Research Assignment
- Presentation

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

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Assessment tasks

- Theoretical Assignment
- Research Assignment
- Presentation

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

- Demonstrate a thorough understanding of the basic principles and policies underlying pollution law, and how they may be used to achieve environmental goals.
- Analyse hypothetical legal problem situations and formulate and present appropriate oral and written arguments in response.
- 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
- Research Assignment
- Presentation

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

- 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
- Research Assignment
- Presentation

Changes from Previous Offering

Generally the unit is similar to previous offerings, although readings and materials have been extensively updated. Further, a new topic has been included on International Approaches to Hazardous Waste.

Changes since First Published

Date	Description
15/08/2016	I have deleted reference to COE. I have changed reference to OCS from 3 to 2 days as 3rd day has been cancelled by Department of Law. Thanks Zada