Climate change and legal risk

Overview

Climate legal risk

- Effects of climate change
  - direct (physical) impacts
  - indirect impacts – legals

- Primary concerns
  - responsibility for loss/damage
  - responsibility for paying
Climate change and legal risk

Overview

What is climate legal risk?

- consequences of our decisions
- the legal risk that accompanies a climate change related decision
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Direct and indirect impacts

Climate legal risk

Decision

Physical impacts

risk

risk

risk

risk
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Liability

Various forms of liability?
- Common law liability
- Statutory liability

Knowledge of climate change
- reasonable / unreasonable
- SPA (Qld), CCA (Vic), etc
Climate legal risk

- Climate change related decisions
  - exposure to climate legal risk
  - natural or built environment
- How do we reduce risk?
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Brisbane flood

Climate legal risk
Climate change and legal risk

Tasmanian Bushfire Inquiry
Climate legal risk

- Daikyo (North Qld) Pty Ltd v Cairns City Council & Ors - not the court's responsibility to set design standards
- Mackay Conservation Group Inc v Mackay City Council – followed Daikyo
- Charles & Howard Pty Ltd v Redland Shire Council – entitled to consider climate change
- Aldous v Greater Taree City Council - required to consider climate change impacts as part of the public interest
- Copley v Logan City Council & Anor – question about standards
- Rainbow Shores P/L v Gympie Regional Council - climate change related sea level rise
Usual negligence principles apply where councils making DA decisions as a statutory function

- Duty of care > Breach of duty > Causation > Damage
- Important defences in Civil Liability Act and Local Government Act
- Defending claim requires documentary evidence of reasonable care – including acting consistently with statutory requirements
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Messages from the courts - negligence

Climate legal risk

- Port Stephens Shire Council v Booth [2005] NSWCA 323
- Melaleuca Estate Pty Ltd v Port Stephens Council (2006) 143 LGERA 319
- Bankstown City Council v Alamdo Holdings Pty Ltd (2005) 223 CLR 660
- Makawe Pty Ltd v Randwick City Council [2009] NSWCA 412
- MM Constructions (Aust) Pty Ltd and Anor v Port Stephens Council (No 6) [2011] NSWSC 1613
Climate legal risk

- Avoiding litigation/improving prospects of success
  - Accurate recording of decision-making process
  - Reliance on experts/accepted standards as required
  - Staying up to date on legislative and policy change
  - Communication across and within councils
Climate legal risk

- Consider the climate legal risk
  - develop climate change adaptation strategy
  - target change at all levels
  - decision maker understanding crucial
  - guidelines for decision makers
  - risk informed decision makers
Climate legal risk

- When making of a decision that relates to climate change, ...

  ... consider the climate legal risk!
Thank you …

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