

## BOOK REVIEW

### ROWENA MAGUIRE, EVAN HAMMAN, JUSTINE BELL-JAMES, AMANDA KENNEDY AND PHILIPPA ENGLAND, *ENVIRONMENTAL, PLANNING, AND CLIMATE LAW IN QUEENSLAND* (LEXIS NEXIS, 2020)

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With its borders closed to those of us to its south,<sup>1</sup> and its government battling a High Court challenge<sup>2</sup> led by conservative populists<sup>3</sup> suspicious of science<sup>4</sup> seeking to revoke public health orders during the height of a pandemic, Queensland can seem out of view to Victorians. Yet, as someone who teaches environmental law from my progressive bubble in Melbourne, Queensland is always not too far away. This book, a key teaching resource for all Australian environmental law academics, is a reminder of the presence of the sunshine state in our nation's collective jurisprudence and also its local peculiarities. Since 2011, Philippa England has been writing about the unique features of Queensland planning law,<sup>5</sup> and now she is joined by a collegiate group of her peers across universities to publish the first text on the environmental, planning and climate laws of Queensland.

For me, this book is essential. So much of my teaching of environmental law takes my students and me to Queensland – along its coast and its midlands. I start my course at Mon Repos Beach,<sup>6</sup> exploring the conceptual and geographic boundaries of environmental law. We explore the principles, actors and politics of environmental assessment through the Port Hinchinbrook saga,<sup>7</sup> highlight basic environmental rights and powers by reference to cases concerning the

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<sup>1</sup> Border Restrictions Direction (No 8) under the *Public Health Act 2005* (Qld) s 362B.

<sup>2</sup> *Mineralogy Pty Ltd v State of Queensland* [2020] HCATrans 71.

<sup>3</sup> Elizabeth Fisher, 'Unearthing the Relationship Between Environmental Law and Populism' (2019) 31 *Journal of Environmental Law* 383.

<sup>4</sup> Chris Hilson, 'Climate Populism, Courts, and Science' (2019) 31 *Journal of Environmental Law* 395.

<sup>5</sup> Philippa England, *Sustainable Planning in Queensland* (Federation Press, 1<sup>st</sup> ed, 2011).

<sup>6</sup> *R v Murphy* (1990) 95 ALR 493.

<sup>7</sup> *Friends of Hinchinbrook Society Inc v Minister for Environment (No 2)* (1997) 69 FCR 28; *Friends of Hinchinbrook Society Inc v Minister for the Environment (No 5)* (1998) 84 FCR 186.

Capricorn Coast<sup>8</sup> and Fraser Island,<sup>9</sup> translate international laws to the domestic context illuminated by the regulation of the Great Barrier Reef World Heritage Area,<sup>10</sup> and debate the utility and function of national environmental laws situated around the Daintree.<sup>11</sup> More recently, we have begun to discuss the limits of federal climate law in the Galilee Basin.<sup>12</sup> While environmental law seems most readily developed by the New South Wales Land and Environment Court,<sup>13</sup> environmental law seems to happen or at least be magnified to the national view most often in Queensland.

Despite this, my environmental law teaching experience feels incomplete. Too often we skirt around the local of these controversies even though environmental law in this country is overwhelmingly subnational and federated. It is also within states where there are both attempts at creative and responsive laws<sup>14</sup> and draconian ones.<sup>15</sup> Yet the legal developments and the critical appraisal of local laws can be missed unless they are featured in the national realm<sup>16</sup> or have been the subject of empirical inquiry.<sup>17</sup> This book helps fill the gaps that exist in our national understanding of our collective environmental laws.

*Environmental, Planning and Climate Law in Queensland* provides a fuller legal picture about the environmental matters that matter to all of us. Within the book there are detailed appraisals of environmental assessment laws in Queensland, and comprehensive analyses of mining and gas laws. Local nuances in conservation laws and deficiencies in land clearing laws are highlighted, the

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<sup>8</sup> *Australian Conservation Foundation v Commonwealth* (1980) 146 CLR 493.

<sup>9</sup> *Murphyores Inc Pty Ltd v Commonwealth* (1976) 136 CLR 1.

<sup>10</sup> Donald Rothwell and Brad Jessup, 'The Limits of the Great Barrier Reef Marine Park: Defining Bays and Redefining Regulatory Control' (2009) 31 *Federal Law Review* 71.

<sup>11</sup> *Booth v Bosworth* (2001) 114 FCR 39.

<sup>12</sup> *Australian Conservation Foundation Incorporated v Minister for the Environment and Energy* [2017] FCAFC 134.

<sup>13</sup> Brian Preston, 'Jurisprudence on Ecologically Sustainable Development: Paul Stein's Contribution' (2012) 29 *Environmental and Planning Law Journal* 3. Preston's own contribution is significant: Brad Jessup and Yaokang Wong, 'Getting to Bulga: A critical and natural language analysis of the sustainability jurisprudence of Chief Justice Preston', presented at the Frontiers of Environmental Law Colloquium, University of Tasmania; 7 February 2018.

<sup>14</sup> Most recently the Environmental Protection and Other Legislation Amendment Bill 2020 (Qld), which facilitates and intends to improve land rehabilitation.

<sup>15</sup> *Summary Offences and Other Legislation Amendment Act 2019* (Qld), which further criminalises protest activities.

<sup>16</sup> *Whitsunday Residents Against Dumping Ltd v Chief Executive, Department of Environment and Heritage Protection* [2017] QSC 121 following decisions of the federal government to change the law to prohibit dumping of waste in the Great Barrier Reef Marine Park: Great Barrier Reef Marine Park Amendment (Capital Dredge Spoil Dumping) Regulation 2015 (Cth).

<sup>17</sup> Chris McGrath, 'Case Studies', *Environmental Law Australia* <<http://envlaw.com.au/category/case-studies/>>

unique features of Queensland's planning laws are explored, and there is a reflection on the state of contemporary climate law and climate adaptation in Queensland. I appreciated especially learning how universal environmental principles have been filtered through the experience and practice of the law in Queensland, and to observe the relocalising of concepts and laws into our northernmost jurisdiction. This is sometimes missing from texts whose primary purpose is to set out the law rather than capture a narrative of its operation.

The book is temporally important and relevant. The authors have not opted for comprehensiveness at the expense of relevance. These insights lead me to two related strengths of the book that are worth emphasising. First, there are detailed, though accessibly written, chapters on the issues of our time. They include on climate change, waste, and the food-energy-water nexus: each supported by illustrative case study and case law examples that offer excellent grist for the classroom or the thinking through of the application of principles, governance arrangements and laws across affiliated or similar cases or studies – within and as comparators to Queensland. It is a teaching tool not a replacement for teachers.

Second, and what I most enjoyed and respected about the book, it does not start from zero. The book is not a restatement of the law; rather a reading of the law for and from a particular jurisdiction. Towards the end of the book the authors quote John Muir ... 'When we try to pick out everything by itself, we find it hitched to everything else'. That seems the guiding principle for the authors. The authors do not attempt to be the first or the only voice on the subject matter. Their book references heavily the work of others: those who have written about environmental law in Australia. They translate, and try to locate those intersections that illuminate our understanding and enrich our learning about environmental law.

The work pinpoints what is especially pertinent, particular or perplexing in Queensland, which is displayed in the book's final chapter. That chapter traverses the coal revival, the gas boom and the threats to the agricultural heartlands of the state. These are issues that are dominating our national, emotional and political debates;<sup>18</sup> and they serve as a reminder that, for good or for bad, our laws: both national and cross jurisdictional will be influenced by what is happening north

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<sup>18</sup> Brad Jessup, 'Drought, deaths and prayers. Won't someone think of the Australian farmer', presented at Journal of Environmental Law 2019 Workshop: Environmental Law and Populism; Oxford; 20 November 2019.

of the Tweed River. We are therefore indebted to those scholars whose work is reassurance that there is a team of environmental law experts on watch.