



Between the Devil and the Deep Blue Sea: Local Government Responses to Climate Change Adaptation Risk



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Overview

- Climate change adaptation: local responses to a global problem
- Adaptation risks in Australia and the US
- Role of the courts as a forum for setting adaptation policy
- Liability dilemma facing local governments on adaptation
 - Damned if you do – challenges to decision-making taking account of adaptation risk
 - Damned (and in the deep blue sea) if you don't – long-term liability for climate change harms

Adaptation and the local-global continuum

- Adaptation to the unavoidable effects of climate change is a problem of global dimensions
- Adaptive responses are necessarily very locally or regionally focused
 - Particular risks posed by climate change in specific environments
 - Barriers to adaptation vary between regions eg ecosystem vulnerability + technological, financial, social and cultural constraints
 - Success of adaptation involves wide variety of actors beyond governments

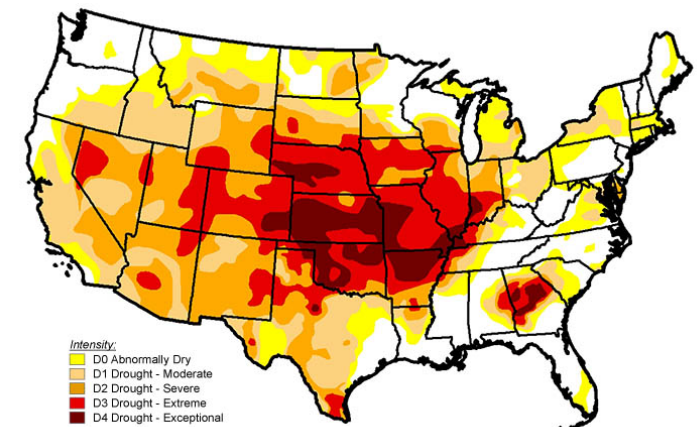
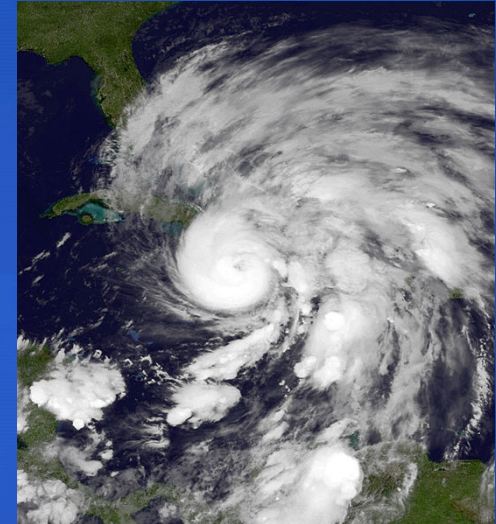


Adaptation risks in Australia



Adaptation risks – United States

- Many similar adaptation challenges
- Greater regional variation in nature of risks and capacity to adapt
- Extreme events but more regionalized impact



Australian climate change action

- Focus on mitigation law and policy: carbon pricing mechanism, renewable energy target, energy efficiency
- Adaptation seen as area for the states – no overarching federal policy
- Many states with conservative governments rolling back proactive climate measures eg benchmarks for future sea level rise



Role of the courts

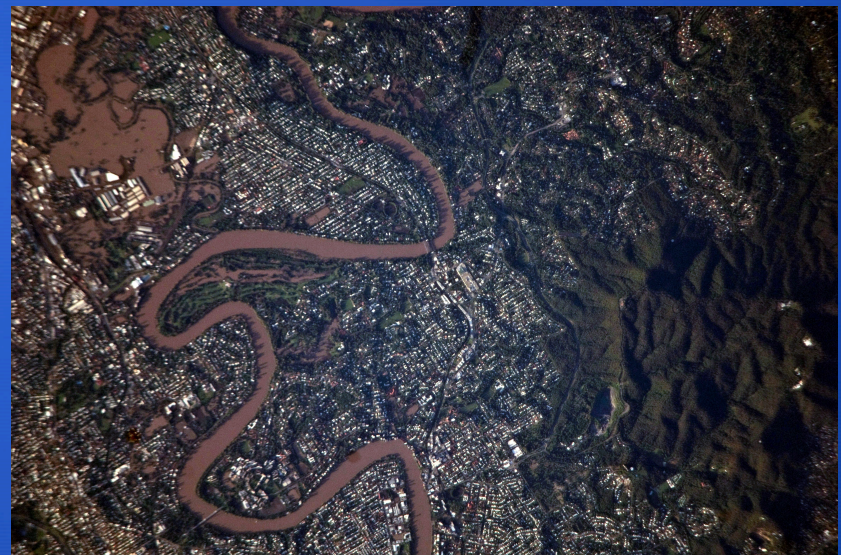
- Litigation as ‘a mechanism for fluid multi-level interests to interact among relatively fixed legal structures’ (Osofsky)
 - Regulatory dialogue mediated by courts particularly important where strong, coordinated government measures to address climate risk are absent
- In Australia, low cost specialist environmental and planning tribunals with relatively broad standing handle planning disputes
 - Increasing number involve adaptation concerns eg sea level rise, flooding, water scarcity, wildfire
- With focus on particular facts pertaining to local situations, judicial decisions tend to speak most directly to local levels of governance

Adaptation case law – coastal impacts

- Since 2006, courts in Australia have sent a clear message that local governments need to take future climate risks into account in current planning on a precautionary basis and in interests of future generations
- E.g. Rainbow Shores case (2013) – refusing permission for large integrated resort and residential community on basis of potential exposure to storm surge, erosion and climate change-related sea level rise



Emerging risks: 'hell and high water'



Between the devil ...

- Coastal councils that do take climate change into account face court challenges to their decisions
 - Cost
 - Property concerns
 - Community ill-will
- Ongoing litigation at Bryon Bay over council's responsibility to maintain anti-erosion measures



And the deep blue sea ...

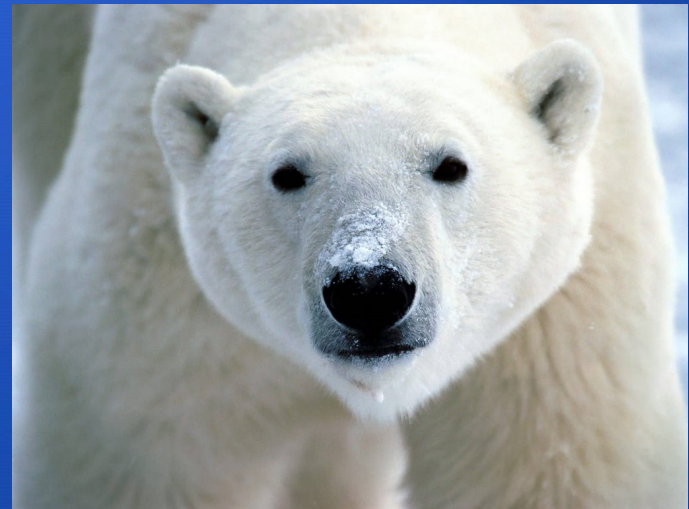
- Potential for future liability in negligence if information about climate risk not taken into account and damage down the line
 - Allowing development on flood-plain, in area subject to coastal erosion/storm surge, with high projected bushfire risk etc
- Also of concern for local government insurers and re-insurers



Climate-proofing infrastructure



Nascent U.S. adaptation cases



Mitigation/adaptation linkage



Should adaptation always be dealt with at the local level?

- “We have a societal problem that we allow – I call them the twelve wise men and women – the elected councillors who are making huge decisions like this and they are relying on guidance from experts but in the end they are butchers, bakers and candlestick makers who are making huge decisions about 25 years planning. When our policy-makers are unable to make a decision that lasts more than two years, how can our poor non-specialist, rural farmer make a decision for 25 years?”
- *Interview participant A17, ARC 'Transition to a Clean Energy Future: The Role of Climate Change Litigation in Shaping our Regulatory Path'*