

BOOK REVIEW – OCTOBER 2008

A Review of "CLIMATE CHANGE: A GUIDE TO CARBON LAW AND PRACTICE" by Paul Watchman (Ed), Globe Business Publishing, UK, 2008 ISBN 978-1-905783-12-0 pp 354

Climate change is a subject that invites grand statements. It has many angles: scientific, environmental, economic, political, social, ethical, moral and legal. For almost any assertion of fact or opinion, there is a contrary view – or there is a specific case that does not easily fit within the generalisation.

In the introduction to this volume of essays edited by carbon law practitioner Paul Watchman, grand statements abound. One of the grandest is Lord Nicholas Stern's assertion that climate change is "the greatest and widest-ranging market failure ever seen." It is in my opinion nothing of the sort. Increases in greenhouse gas emissions are a consequence of modern industrialisation. If climate change is a failure of anything, it is a failure of policy, not of the market.

The editor was unable to resist making a few grand statements of his own. These ranged from the wondrous, "Climate change brings apocalypse now", to the highly imaginative, "Not so much a case of fiddling as Rome burns, but not heeding warnings whilst sweating at home, in the train and in the office." And one wonders about the point of quoting the executive secretary of the UNFCCC as saying "The train to Copenhagen has left the station."

In the overall scheme of things, these may be minor quibbles. As the editor explained:

"Our aim is to examine some of the more interesting aspects of the law and practice relating to climate change and the management of carbon assets and liabilities which have emerged in recent years, and to provide a practical guide to those who toil in the various vineyards that have been planted as part of the carbon market in recent years."

There is no doubt that the editor has compiled a comprehensive series of well-written essays by leading carbon law practitioners in one handy volume. Eight of the volume's 17 essays were contributed by the editor

and his colleagues from the international law firm of Dewey & LeBoeuf, with John Bowman contributing to three of the essays.

A thoughtful historical essay has been provided by Professor Peter Cameron of the University of Dundee, who highlighted that the problems of tackling climate change are essentially global, respecting no national boundaries. Cameron suggested that market mechanisms and legal frameworks, both international and regional, have the central role in tackling climate change and emphasised that climate change law has only just begun to evolve. Although Cameron briefly outlined the core principles of the UNFCCC, citing sections 3 and 5, I would have liked to have seen some further analysis.

For legal practitioners whose main interest is in the conveyancing side of things, there are three essays which together provide a useful primer for legal practitioners: Selling Carbon Credits by Christopher Norton, Nature of an Allowance by Martijn Wilder and Market Contracts by Anju Sanehi.

Legal practitioners will likewise find useful the essay on Corporate Transactions by John Bowman and Simon Read. Corporate social responsibility, accountability and reporting standards were canvassed by Angela Delfino, Mike Wallace and the editor. So also were accounting and taxation issues by Iain Calton, Helen Devenney and Sarah Nolleth.

An informative essay on climate change litigation has been contributed by the editor and his colleagues Jose Cofre and Nicholas Rock. They have described the application of the law of nuisance, the law of negligence, the law of product liability and human rights law to climate change, drawing out the application of the principle of causation in the law of negligence. They have also elaborated on how administrative law enables governmental decision-making to be challenged. This will be of interest to all

practitioners concerned with challenging or defending planning approvals for new projects.

A project developer's perspective has been provided by John McMorris. In an essay on the specialised topic of developing city buildings, Tim Baines and John Bowman have highlighted how traditional legislators have been overtaken in tackling the climatic impacts of buildings. They have propounded that legislation has a need to catch up.

Most of the greenhouse gas emissions attributable to modern industrialisation arise from the combustion of fossil fuels in stationary energy applications, particularly in electricity generation. In this regard, carbon capture and storage (or carbon sequestration as it is often called) is seen as one of the key solutions so long as the cost does not prove to be prohibitive. The editor with his colleagues Juliette Addison and John Bowman have provided an essay that highlights the need for a harmonised, consistent, transparent and flexible regulatory framework.

A shortcoming of this volume is the absence of a thorough explanation of the differences between compliance and voluntary markets, the former referring to the legislatively mandated schemes such as the EU emissions trading scheme – the latter referring to the many voluntary or informal markets that have sprung up of their own accord around the world. Although the latter are only a fraction of the size of the former, they are expanding at a much greater rate. The potential for the future merging of the two market approaches is also deserving of consideration. As Peter Cameron wrote, the real history may only just be beginning.

The closest the volume gets to the subject of the interrelation between the compliance and voluntary markets is an essay by Christopher Carr and Flavia Rosembuj on Structuring and Financing Projects. There is also an essay by Anthony Hoblely on Creating A Global Carbon Market. Another essay which touches on the subject is Carbon Regulation in the United States by Steven Ferrey and Courtney Quinn. An essay on carbon trading in Europe is provided by Seb Walhain and an essay on competition law as it applies to carbon markets is provided by Peter Crowther and Lucie Fish. But these do not fully explain these fundamental features of the two types of market.

A very pleasing feature of this volume is that it is up-to-date: many of the references are to cases and events of 2008. Another pleasing feature is an index for readers wishing to search for a particular topic.

This is one of the more valuable and up-to-date guides on carbon law yet to emerge and a demand for future revisions can be envisaged.¹ It is far from a perfect guide but, as can be inferred from my earlier remarks, this is largely a function of the fact that climate law is only in its early stages of evolution.

To be read before it is out of date.

Robert Pritchard

ResourcesLaw International, Sydney
Email: robert.pritchard@resourceslaw.net

¹ It may be compared with another volume: Michael Gerrard (ed), *"Global Climate Change and US Law"*, American Bar Association, Chicago Ill USA, 2007.