

# Energy Law and the Environment by Rosemary Lyster & Adrian Bradbrook, Cambridge University Press

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### Recommended Citation

Feldon, Jon. "Energy Law and the Environment by Rosemary Lyster & Adrian Bradbrook, Cambridge University Press." *Sustainable Development Law & Policy*, Spring 2007, 65-66.

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# BOOK REVIEW

## ENERGY LAW AND THE ENVIRONMENT

by Rosemary Lyster & Adrian Bradbrook, Cambridge University Press

Reviewed by Jon Feldon\*

As issues such as the depletion of fossil fuels and climate change rise to the forefront of modern international problems, energy law has become increasingly important in the modern world. In *Energy Law and the Environment*, authors Rosemary Lyster and Adrian Bradbrook paint a detailed picture of where Australia has been, and where it is headed in its efforts to adapt its energy policies to suit the needs of its population, as well as stave off the environmental problems that will result from climate change and current non-sustainable energy practices.

The authors describe an Australia that is, and will likely remain, a country heavily dependent on fossil fuels. Australia, rich in coal, will likely continue to utilize coal as a majority fuel source for electricity, along with oil. Although Australia's federal government has refused to ratify the Kyoto Protocol, arguing that without the participation of the United States or developing nations the Protocol will fail and uselessly jeopardize the Australian economy, the country has a number of vulnerabilities that will provide strong incentives for change. Examples of such vulnerabilities include: water resources already stressed by overuse and increasing salinization; a food production sector highly sensitive to changes in rainfall; increased population centers in areas vulnerable to the increased cyclones and storm surges of a warmed Earth; and sensitive ecosystems that could be irrevocably harmed or destroyed by climate change, including the Great Barrier Reef, on which thousands of tourism-related jobs depend. All of these susceptibilities provide incentives for Australia to make policy changes.

Lyster and Bradbrook also describe how Australian energy law is governed. In addition to describing the reform efforts of individual states, the authors detail how the federal government's role in energy management has evolved over time. The Australian Constitution, established in 1900, grants individual states

the right to manage their own natural resources. In the 1970s, as international law began to pay more attention to environmental and energy issues, the Australian federal government began legislating definitions for its own environmental powers. For instance, the Environmental Protection Act of 1974 required all Commonwealth officers to consider the environmental impact of their actions. Similarly, the Great Barrier Reef Marine Park Act

of 1975 gave the federal government the authority to federally regulate the management of the reef. Slowly, a federal right to legislate on environmental matters emerged over time, as confirmed in the case *Commonwealth of Australia v. State of Tasmania*, also known as the Tasmanian Dams case. In 1993, after years of constitutional litigation between the states and the federal government, the federal

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and state Australian governments enacted the 1993 Intergovernmental Agreement on the Environment, which established areas of regulatory responsibility, and assigned responsibility for pollution, national energy concerns, and heritage protection through the Council of Australian Governments ("COAG"), and the Ministerial Council on Energy.

As explained in the book, energy supply in Australia traditionally functioned by means of a state monopoly. As the energy industry privatized over time, the accompanying legal restructuring focused primarily on issues of competition and fair pricing rather than environmental sustainability. Even major reforms enacted as recently as 2005 by COAG to adjust the National Energy Market ("NEM") have failed to address climate change or greenhouse gas emissions. The authors compare Australia's efforts to those of other countries, and suggest that a deliberate pursuit of sustainable and environmentally-friendly policies

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must be taken, because natural competition and market forces will not push Australia's energy system in those directions by themselves. In addition, the authors discuss the concern that policies adopted by COAG are technically unconstitutional, because they are actions taken outside of normal governmental processes. Lyster and Bradbook note that the formation of the NEM in 1998 was accompanied by a spike in greenhouse gas emissions, a clear sign that economic efficiency would not address environmental energy issues. Although a number of positive reforms have been made on a national level to improve the environmental sustainability of the NEM, such as a nationally-applicable emissions-trading system, no amendments were added to the National Electricity Law to ensure achievement of both a restructured electronic industry and the reduction of greenhouse gas emissions.

In addition to analyzing the various efforts of the federal government and state governments to regulate both the electricity and the gas markets, the authors discuss the effectiveness of

such efforts as compared to those of other countries, as well as the industry response in Australia. Moreover, alternative electricity options are weighed as well. For example, although Australia sits on forty percent of the world's uranium reserves, nuclear power is not an attractive alternative because the cost of building nuclear plants: (1) would not be cost-effective; (2) creates other waste-related problems; and (3) might distract attention away from the country's development of solar, hydro, and wind energy technology, for which Australia is a world leader in some respects.


Ultimately, Lyster and Bradbook contend that Australia must pursue a variety of new energy-creation strategies, as there will not be one particular "magic bullet" technology that

will suddenly make Australia's energy structure environmentally sustainable. However, a general theme throughout the book is that sustainability must be made the highest priority for energy regulation on every governmental level, because without a legislative push, market forces will not take heed of looming environmental problems, like climate change, until it is too late. 

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##### **For more information**

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