

SESSION 2: CASE STUDY 2

Convergence: The potential legal implications of juggling environmental responsibility with economic ambition

Ms Caitlin McConnel
Australian Farmer & Lawyer



Abstract

Since ratification of the Paris Agreement in 2015, the development of policy aimed at building climate resilience has largely focussed on holding the increase in global temperature average whilst making finance flow consistent with a pathway towards low greenhouse gas emissions and climate-resilient development; with buzzwords such as 'ESG', 'net zero', 'climate-smart' and 'natural capital' now common in day-to-day vernacular.

Whilst the emergence of these terms has coincided with statutory obligations to report on sustainability initiatives or climate risks, as well as investment opportunities in renewable energy projects or alternative food production technologies, it is arguable that such terminology demonstrates a continued focus by government and business to value natural assets and food security through a numerical lens of economic growth and development. Although placing a numerical value on nature and food production can help promote innovation or incentivise environmental protection; it is a little-known fact that the Paris Agreement was entered into in pursuit of the United Nations Framework Convention on Climate Change (UNFCCC), which both reiterate that:

- increasing our ability to adapt to climate change, foster climate resilience, and reducing greenhouse gas development must be done in a manner that does not threaten food production, and
- when taking action to address climate change, parties must consider:
 - their respective obligations on human rights, and
 - the fundamental priority of safeguarding food security, food production systems, and Mother Earth.

Furthermore, few decision-makers are aware that courts of law across multiple jurisdictions are now scrutinizing the alleged failures by government or business to consider the aesthetic and spiritual value of nature in the context of human rights through climate litigation; in a real-time convergence demonstrating the importance of returning to the first principles of ecologically sustainable development.

Introduction

As a farmer, I am acutely aware that policy and common sense rarely go hand in hand. However, given my experiences as a lawyer, today I am grateful for the opportunity to demonstrate that the answer to effective policy may be easier than expected.

Language, and the use of accurate terminology is crucial, and is the key to understanding why the opportunities and risks associated with climate change mitigation begin, and end, with only two topics:

- The rule of law; and
- Food security.

Significantly, answers to effective policy and fundamental behavioural shifts may be easier than expected.

In setting the scene, I am yet to come across another quote that can eloquently describe the juncture we currently face than one made by a British farmer & social scientist:

"If the idea that you can lead a modern, high-energy, zero-carbon lifestyle in the city, eating manufactured food that tastes as good as or better than its farmed predecessors, while protecting wildlife and making room for Indigenous and peasant farmers to follow traditional livelihoods in the countryside sounds too good to be true ... that's because it is."

In legislation and in judgment writing, the choice and placement of words are paramount and always backed by legal reasoning.

Climate Change Threatens

In the first case of its kind in the world to challenge the day-to-day operations of two agricultural companies and five companies involved in the business of fossil fuels, and their respective impact on humans, and the environment, the NZ Supreme Court held in 2023 that:

Climate change threatens human well-being and planetary health. The choices made, and actions implemented, in this decade will have impacts both now and for thousands of years.

Here, it can be interpreted that the Court specifically chose to place human well-being before planetary health, in the context of climate change threats, because human well-being - and human rights - are inherently at the core of all legal policy about ecologically sustainable development.

Climate: Opportunity

Since ratification of the Paris Agreement and the adoption of the SDGs in 2015, the development of policy aimed at building climate resilience has largely focused on holding the increase in global temperature average, whilst making finance flow consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

Australia's Statutory Approach

Using Australia as an example, we now have:

- Statutory obligations on the government and business to adopt and report on sustainability initiatives.

- Plans and strategies aimed at targeting investment in research and development, or capacity building to support the uptake and adoption of low-emissions innovations and technologies; and
- Roadmaps and statements aimed at encouraging change in land or water use through renewable energy projects or alternative food production technologies.

This is an approach I consider can be interpreted as demonstrating a continued focus by government and business to value natural assets, and opportunities associated with building climate-resilience, through a numerical lens of economic growth and development.

Particularly when having regard to some of the buzzwords now common in day-to-day vernacular, such as 'net zero' and 'natural capital', which I think it is crucial to identify as being terms that are not legally defined in Australia and are often misunderstood or misused, particularly by policymakers.

Whilst I appreciate that placing a numerical value on nature can help incentivise ecologically sustainable development, it is a little-known fact that this approach only takes two of the three limbs of the Paris Agreement objective into account.

Climate Litigation

Astonishingly, policymakers and investors are arguably blissfully unaware that we are currently facing a real-time convergence of legal opportunity and legal risk never seen, whereby government and business across multiple jurisdictions – including Australia - are now increasingly exposed to strategically targeted allegations of climate harm; not only in the context of emissions reduction, but significantly, human rights. Key trends include:

- Claims challenging the ambition of a government's overall climate policy responses, or a failure to integrate climate considerations into decisions on a given project or sectoral policy.
- Litigation attributing personal responsibility by individual decision-makers within government or businesses for failing to adequately manage climate risks in corporate governance and decision-making.

Australia is a jurisdiction maintaining one of the largest volumes of climate litigation in the world; and much like a deer in the headlights, government and business are painfully susceptible to allegations of breaching international law, particularly in the context of the human right to food.

Climate risk

There are 29 fundamental human rights that are to be universally protected, and form the basis of various legally binding international treaties, including the International Covenant on Economic, Social and Cultural Rights, which stipulates that government and business must:

- '*recognise the right of everyone to an adequate standard of living*'; and
- '*avoid infringing on the human rights of others*'.

Significantly, human rights already underpin legislation in Australia, with examples including the Fair Work Act, Modern Slavery Act, and the Environmental Protection and Biodiversity Act.

Whilst the human right to an adequate standard of living, which including the right to food, water and shelter, is not yet enshrined in law in Australia; or in the handful of state & territory based

legislation; the May 2024 report following the inquiry into Australia's Human Rights Framework set out reasoning, and provided a draft bill, as to why all 29 human rights should be protected nationally; so it may only be a matter of time.

How did we get here?

So, what type of thinking, or decision-making, got us to this concerning juncture?

We are here because of our desire to narrowly interpret nature, and its role in society and the environment, which can be eloquently demonstrated by the following quote from a US environmental economist in 2012:

*"(V)erbal rhetoric ... steeped in beauty and ethics is **impotent against the numerical rhetoric of growth and development.**"*

When considered only through the lens of modern economics, this interpretation could be argued as being common sense, as it is indeed the way in which we have placed value on natural assets over thousands of years.

Pre-trade hunger

In 1940, English botanist Sir Albert Howard described this shift through the "hunger" of which our soil, lakes, rivers, and oceans had to feed. Prior to the development of currency by the Mesopotamian civilisation in the 7th – 5th millennium BC, the main source of hunger the environment had to appease was the stomach.

Industrial hunger

However, it was because of the Industrial Revolution that competition for our natural resources began to impact the way in which we use the environment.

And why a subsidiary hunger for trade and manufacturing evolved for the purposes of feeding the economic machine.

In 1979, a US farmer opined that because of the industrial revolution, "rural wealth and materials and rural people were caught within the gravitational field of the industrial economy and flowed to the cities from which comparatively little flowed back in return."

Climate Treaties

In the context of agriculture and food security, it's appropriate to surmise that from the early 1990's, Member States of the United Nations – including Australia – made similar observations as to our impact on the environment, which subsequently led to the ratification of various climate change treaties.

However, rather than fundamentally shifting the way in which we value and use natural assets, I am of the view that we have continued to focus on nature as a commodity used in the attainment of sustainable development.

Current Hunger

Some 85-years since Sir Albert Howard's description, I've gone a step further to demonstrate that we as individuals are now not only hungrier for food, trade and manufacturing; but our soil, lakes, rivers, and oceans are now having to appease our hunger for increased urban development.

And our hunger for wealth generation through sustainable, green development, which is arguably coming at the expense of our ability to produce food and fibre, in circumstances where our approach to land and water use is currently determined by “either/or” considerations.

That is, what sustainable development activity - be it food production, green energy production, or sustainable housing - is going to be the best decision to not only derive economic viability but also appear to satisfy environmental goals.

Significantly, it is this narrow interpretation through existing and emerging policy that is placing Australian government and business at risk of breaching international law.

Why?

Framework

Because the Paris Agreement was entered into in pursuit of the United Nations Framework Convention on Climate Change, which both maintain an underlying objective to increase our ability to adapt to climate change, foster climate resilience, and lower greenhouse gas emissions in a manner that does not threaten food production.

And when taking action to address climate change, the cumulative effect of these treaties provides that parties must consider:

- their respective obligations on human rights, and
- the fundamental priority of safeguarding food security, food production systems, and Mother Earth.

You heard me correctly.

Our obligation to consider food security in the context of climate change mitigation is written in black and white in the very manual – or climate treaties – policymakers are required to use when enshrining climate adaptation into law.

And last month, the International Court of Justice opined that the ‘obligations of conduct and obligations of result’ are ‘mutually supportive’; and compliance of the parties with the obligations of the Paris Agreement is assessed on whether the party in question ‘exercised due diligence and employed best efforts by using all the means at its disposal in the performance of those obligations’.

Much like driving a tricycle with only two wheels, it is clear to me that policymakers – particularly in Australia - are failing to exercise due diligence by neglecting our clear obligation to prioritise food security.

Sustainable food production

Indeed, last night Joel rightly concluded that the agriculture sector is one often overlooked in policymaking; despite food being the one topic that transcends culture, race, politics, or gender.

It is a recognisable foundation of our culture, our economies, and our relationship with the natural world; but much like a valuation of nature, it is too often only considered in the context of production and export capabilities, despite being recognised by the UN as having an essential role to play in the solution to existing challenges associated with climate change.

Food Security

Whilst the definitions of food security and the human right to food differ, there is a crucial overlap at law.

In accordance with the International Covenant on Economic, Social and Cultural Rights, in order to satisfy food security as a precondition to human rights:

- **Availability** of food means that food should be available from natural resources or available for sale in markets and shops.
- **Accessibility** requires that economic and physical access to food be guaranteed, in that:
 - the minimum wage, social security benefit and infrastructure is sufficient to meet the cost of nutritious food in all areas.
- **Adequacy** means that food must satisfy dietary needs and be culturally acceptable; with examples of inadequate food including:
 - energy-dense and low-nutrient food, which can contribute to diet-related illness.

Since time immemorial, and as the atrocities in the Northern Hemisphere are demonstrating, hunger has always been a powerful weapon of war.

And despite our abundance here in Australia, it is due to our collective shortcomings when considering food security in its broad definition, that I share the sentiments shared by John and Joel last night that we are now in our most precarious era.

Valuing Nature through Food Security

How then can we fundamentally shift our decision-making to mitigate the risk of breaching international law?

Multiple Values

In 2015, the Millennium Ecosystem Assessment Board opined that:

"To protect 'natural capital assets' ... we must put value on nature in all its multiple roles in human life, from the economic to the aesthetic and spiritual."

Whilst placing an aesthetic and spiritual value on nature in the context of ecologically sustainable development may appear to be an exercise in futility, it is one that the IPCC demands of us.

Interdependent Hunger

As in 2023, it identified that the implementation of the Sustainable Development Goals

'require climate resilient development that treats climate, ecosystems and biodiversity, and human society as parts of an integrated and interdependent system'.

When having regard to international law, and extrinsic materials including IPCC reports or UN guiding principles alongside domestic plans, roadmaps, and Ministerial statements; I think it is arguable that a court of law would consider an integrated and interdependent system is one that ensures that our finite natural assets are used to appease the main hunger of the stomach of humans, flora and fauna, first and foremost.

With all subsidiary hungers as being complementary.

Indeed, this is the very task currently before the Supreme Court of New Zealand in the case of *Smith v Fonterra & Ors.*

Rather than waiting for the inevitable filing of legal proceedings to spur the fundamental behavioural shift in policy and decision-making required in Australia – or indeed any jurisdiction – there is a simple way in which we can:

- demonstrate best practice when striving to adhere to the strict legal obligations we have under international law; and
- juggle environmental responsibility with economic ambition.

Food Security Pyramid

Rather than the usual silos of science or economics, this action is based on the rule of law, which is the very reason we are having this discussion.

Through statutory interpretation, and arguably common sense, food security underpins all international climate change treaties, and guiding pillars of sustainability.

As set out in my submissions to this very Parliament through our inquiry into food security in Australia a few years ago; there is economic, scientific, and legal-based evidence identifying that food security underpins not only our national strategy for ecologically sustainable development, but significantly, each one of our government portfolios.

So, instead of taking a piecemeal approach to policy development within the silos of government, I consider that an overarching human rights policy requiring government and business to consider human rights in each decision should be enshrined in law.

UHNCR Guiding Principles

I am not reinventing the wheel, but am instead taking guidance from the instruction manuals, which we are bound to consider, which reiterate that:

- States must protect against human rights abuse.
- Business, at a minimum, must respect the International Bill of Human Rights.
- And States must take appropriate steps to protect against human rights abuse by ensuring access to effective judicial, administrative, or legislative remedies.

Unlike the carve-out seen in Queensland legislation, enshrining human rights in law must include the Human Right to an Adequate Standard of Living, which encompasses the Human Right to Food.

And what I consider to be a final guiding tool; our definition of food security must be broadened in keeping with guidance by the United Nations in recent years to accurately reflect not only our obligations at international law, but arguably what should be common sense for all.

Case Study: Cressbrook

Last night, John asked us to mentor this year's scholars by providing them with the ideas to lead in this space. Whilst advocacy and research are crucial, I hope that through my active choice to leave work last year at a national law firm to instead live and work on farm demonstrates the importance of leading by example.

Whilst the net revenue of my business and minute land holding would arguably place me in the "hobby farm" definition of modern economics; I am confident that if judged by a court of law, my operation would demonstrate that I am standing on the shoulders of land management decisions

made by generations of my family in conjunction with the local Dungiburra tribe, to continuing to evolve our stock, land, water, and energy management techniques to ensure that both human and environmental health continues to prosper.

Indeed, the question at the heart of each decision I now make on farm is not “what is the highest and best use of our land in order to reduce greenhouse gas emissions as all costs, whilst also remaining profitable business”; but rather, “what actions can I take will ensure there is no hand-to-mouth existence for our environment, or my family”.

This is arguably a commonsense mindset for a farmer, but it is somewhat fortuitous that my opinion does not come from a place of personal pontification, but rather, an example of the conclusion made by the International Court of Justice, which concluded last month, that the right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment.

Conclusion

In conclusion, through legal interpretation it is my sincere hope you can now see that whilst solving the issue of food security should not be placed solely on the shoulders of primary producers and landholders; it is clear that in accordance with the strict obligations of international law, we – and the human right to food - must be placed at the core of every economic, social, and environmental decision.

Perhaps, too, we can all agree that having farmers and lawyers at the table as part of policymaking is just common sense.

Thank you

Caitlin McConnel is a sixth-generation farmer, legal strategist, and prominent agribusiness leader based at Cressbrook Station in Queensland's Somerset Region—the oldest identified family business in the state. A passionate advocate for sustainable land stewardship and regional resilience, Caitlin combines deep practical experience on-farm with a strong legal and governance background.

She currently serves as Chair of the Queensland Rural and Industry Development Authority (QRIDA), having been appointed in April 2025 by the Hon. Dale Last MP. Caitlin is also actively involved in national industry conversations through roles with Cattle Australia, the Queensland Law Society, and the Department of Primary Industries ESG Working Group.