Editorial

The publication of this latest issue comes at a sensitive time for global climate action. The COVID-19 pandemic is leaving its marks on societies and economies around the world, disproportionately affecting the most vulnerable. Meanwhile, like many other multilateral processes, the United Nations Framework Convention on Climate Change (UNFCCC) appears to be on hiatus, being forced to postpone important meetings relevant to the implementation of the Paris Agreement. Of course, climate policy is not limited to the international level and both national and subnational efforts continue to gain importance as the global climate crisis unfolds. This comprises not only state legislation, but also court cases, social movements and private sector action. It is at the national level where most of the contributions of our present issue are located.

Not only has there been an upswell of climate litigation in recent years – which was the focus of our most recent issue – but the present level of ambition of parties' commitments under the Paris Agreement makes it clear that implementing national climate legislation is not merely complementary but instrumental to curbing the trajectory to a 2°C let alone 1.5°C future. Recent reports suggest we are 70% likely to exceed the 1.5°C goal for one or several months in the coming five years – and 20% likely to exceed it for a whole year – with that likelihood only increasing as time moves on.¹ Should this trajectory continue without a significant ramping up of present mitigation efforts, an overshoot may be inevitable and will necessitate the removal of greenhouse gases from the atmosphere. This places us squarely in the terrain of climate or geoengineering, which has been under discussion in academic and policy circles for over a decade now. Scholarship has not only considered the feasibility of various climate engineering methods, but also the costs, potential adverse impacts and governance challenges, among others.

In their article, **Andrew Lockley and colleagues** make a fresh contribution to the geoengineering debate by evaluating these emerging technologies and approaches through the lens of the public trust doctrine. They draw on the public trust doctrine to make a compelling case for geoengineering as a state's obligation to protect assets currently held in trust, such as public beaches, coastlines, and fisheries. They further consider the doctrine's applicability to the global commons and deliberates the potential implications for geoengineering. Recognising that the doctrine has yet to be relied on successfully before a court to compel a government to more ambitious climate action, Lockley also considers its limitations as a tool to mandate geoengineering.

At the level of national climate action, our present issue takes a closer look at key climate law developments in Australia and New Zealand. **Elena Aydos and colleagues** analyse the *Rocky Hill* case decided by the Superior Court of New South Wales last year as a legal breakthrough altering the understanding of impacts of downstream GHG emissions from a proposed coal mining project. They highlight, in particular, the Court's careful consideration of the broader doctrinal implications of distributive justice principles including

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¹ WMO (2020), 'New climate predictions assess global temperatures in coming five years' [Press Release] Geneva, 9 July 2020 <<https://public.wmo.int/en/media/press-release/new-climate-predictions-assess-global-temperatures-coming-five-years>> accessed 9 July 2020.

intra- and intergenerational equity, and its recognition of Aboriginal people's heritage, customs and beliefs. The authors pay special heed to Chief Judge Preston's role in this unprecedented decision whose judgement extended to consider the impacts of the mine on climate change, and compellingly argue that the case has extended the horizon for climate change litigants.

Magnus Abraham-Dukuma and colleagues provide an account of New Zealand's climate law and policy landscape, highlighting key policy and regulatory instruments to reduce emissions from the highest-polluting sectors of energy and agriculture. Building on a detailed description of the wider regulatory context, they evaluate the strengths and weaknesses of the current regime, focusing in particular on the offshore oil exploration ban and the proposed regulations of agricultural emissions. The authors provide key policy insights relevant not only for the country but potentially other jurisdictions with similar circumstances.

Building nicely on this review, **Elena Aydos, Sven Rudolph and Achim Lerch** examine the reform of New Zealand's Emissions Trading Scheme as a case study of a wider inquiry into the application of justice criteria for the evaluation of GHG cap-and-trade schemes. Highlighting that most literature to date has evaluated such instruments from the perspective of effectiveness and efficiency, they propose specific sustainability and fairness criteria to evaluate cap-and-trade schemes. Applying these criteria to the New Zealand Emissions Trading Scheme, the authors provide a helpful tool both for revising existing schemes and evaluating *ex ante* the design of new cap-and-trade schemes in other jurisdictions.

I am pleased to announce a new segment of our journal that we are launching with this issue: The CCLR 'Practitioner's Perspective'. In this segment, we invite contributions from legal practitioners and scholars to share their insights and opinions on recent and ongoing climate law and policy developments they are involved in. In the present issue, **Paul Mougeolle**, In-House Lawyer of the French NGO Notre affaire à tous shares his perspective on the *Total Climate Case* currently before the French courts. This new segment is part of an effort to chart the future path of *Carbon & Climate Law Review* whilst staying true to our commitment to provide cutting-edge and high-quality content both for academic and professional audiences.

You can support us in this endeavour by sharing your feedback and ideas as readers and subscribers of the journal by filling in our short following survey under the following link: shorturl.at/dmCU2. We look forward to your responses.

Patrick Toussaint
Managing Editor