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ARTICLES

Engagement: Australia’s weak link in biodiversity protection – *Paul Martin, Elodie Le Gal and Miriam Verbeek*

International and domestic conservation laws aim to address the biodiversity decline that is caused by intertwined environmental and human behaviour factors. In Australia, despite the country being a signatory to relevant conventions and having many biodiversity conservation laws, policy instruments and associated biodiversity strategies are not adequately protecting nature. For Australia to meet its Convention commitments to biodiversity protection a more effective approach to managing human behaviours is needed. Both tangible and intangible resources, including more scientifically sophisticated approaches to managing community engagement, are essential if legal instruments are to be made effective. This article forms part of a growing body of scholarship on the implementation of environmental instruments, and suggests that legal effectiveness will require new academic and policy approaches that take into account the diverse drivers and practical constraints on human behaviour. 383

Compliance with statutory directives and the negligence liability of public authorities: Climate change and coastal development – *Justine Bell-James and Anna Huggins*

Statutory directives, such as the requirement for government decision-makers to “have regard to” a prescribed matter, are extensively used in climate change and coastal development legislation. This article considers how compliance with a statutory directive may influence judicial analysis in administrative law and negligence proceedings, drawing examples from three Australian State case studies. In all case study jurisdictions, decision-makers are required to gather and acquaint themselves with a substantial amount of information on risks such as sea-level rise, erosion and inundation. This article concludes that although compliance with a statutory directive may protect a decision-maker from a successful administrative law challenge, the information gathered to satisfy this directive may influence a court’s assessment of duty and breach in a future negligence action. Ideally, therefore, decision-makers should consider the short- and long-term significance of information on climate change impacts in order to reach a decision that is both procedurally and substantively sound. 398

Adapting to a sustainable energy future: Part 1 – The localisation of sustainable energy generation under the New South Wales planning law regime – *Hon Justice Brian J Preston SC and Tristan Orgill*

The Australian energy sector is undergoing a significant transition towards renewable energy. As part of this transition, the supply of electricity generated by small-scale solar photovoltaic electricity generating systems (“solar pv systems”) is likely to significantly increase. The New South Wales planning law regime will play an important role in either facilitating or restricting this expansion of solar energy. Part 1 of this article critically examines whether the regime is well equipped to encourage the efficient installation of

solar pv systems yet prevent the potential adverse impacts of such development. In particular, the adequacy of the regime in managing the risk that solar pv system developments diminish the aesthetic heritage values of listed heritage conservation areas is considered. Part 1 of this article advances two principal arguments: first, that the unusual drafting of the primary environmental planning instrument may pose unnecessary and significant obstacles to the successful growth in solar pv electricity generation; and, secondly, that the proper conservation of heritage items and places requires that proposed publicly visible solar pv systems be subject to merit assessment. 418

Community Engagement Charters: South Australia’s proposal to change the approach to community involvement in land-use planning – Paul Leadbeter

South Australia is presently undergoing a major reform of its land-use planning regulatory and policy system. A key element of its new *Planning, Development and Infrastructure Act 2016* (SA) is a requirement to create a Community Engagement Charter which seeks to change and arguably improve the approach to community engagement in planning processes. In particular, it is intended that the Charter alter the point at which the community most engages with planning issues from the traditional development assessment stage to the policy creation stage, the rationale being that, if the policy is correct, there should be no problem with the assessment of proposed development against such policy. The article argues that the success of this significant change from previous practice will depend very much on the community being confident that its views on planning and development are accorded due weight and that, once policy is set, development assessment decisions are made in accordance with that policy. Problems will arise where community wishes do not reflect the planning and development objectives of the government of the day. 436

China’s market-based environmental reforms: From inception to international co-operation and integration – Benny Hu and Richard Simmons

This article critically analyses the background to China’s carbon market reforms and assesses the country’s current progress in introducing cap-and-trade systems for carbon credits, participating in the clean development mechanism provided for in the Kyoto Protocol, and promoting a voluntary carbon market. The article explains how China, using a command and control approach it has employed previously in other spheres, has established cap-and-trade emissions markets as pilot schemes in selected parts of the country, and is now quickly moving towards the creation of a national carbon market. The article then considers the potential for China’s carbon market to be linked with other commensurate markets overseas, in particular that of Australia, a development that would help achieve global emission reduction targets at lower overall cost. 446

BOOK REVIEW

Hydraulic Fracturing in the Karoo edited by J Glazewski and S Esterhuysen – reviewed by Tariro Mutongwizo and Cameron Holley 459