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EDITORIAL

Special Issue Editorial: Frontiers in Environmental Law – *Brad Jessup, Lee Godden and Jacqueline Peel* 469

ARTICLES

Making Climate Science Matter in the Courtroom – *Nicole Rogers*

The author draws upon case studies from Australian coalmine litigation in order to highlight some of the ongoing structural and procedural difficulties in addressing climate change within the restrictive parameters of Australian environmental law. There is a fundamental incongruence between the practical outcomes of such litigation and scientific findings and predictions in relation to the catastrophic consequences of the global failure to address climate change. By way of contrast, alternative forms of climate change litigation which have arisen in other jurisdictions, including tort-based litigation, atmospheric public trust litigation, civil and constitutional rights litigation and the strategic deployment of the criminal defence of necessity, offer interesting possibilities and more compelling narrative frameworks for making climate science matter in the courtroom. 475

Electricity Systems between Climate Mitigation and Climate Adaptation Pressures: Can Legal Frameworks for "Resilience" Provide Answers? – *Stephanie Niall and Anne Kallies*

Resilience is the new "buzzword" in climate policy. Climate adaptation policies especially have increasingly adopted resilience as a lead term in relation to both man-made and natural environments. However, there has been little thinking about how the term would be interpreted in a legal context. The Victorian government has recently introduced legislation that expressly incorporates the term resilience. Not only does the Climate Change Act 2017 (Vic) contain a resilience-related objective, but also the Emergency Management Amendment (Critical Infrastructure Resilience) Act 2014 (Vic) is framed entirely around achieving critical infrastructure resilience. This new Act is the first attempt in Australia to expressly legislate for resilience. In our article, we explore how readily a policy objective of "resilience" can be translated into legal frameworks using the example of electricity infrastructure as "critical infrastructure". The article shows that resilience could be a valuable bridging concept, able to support the transition to a decarbonised as well as climate-proof electricity system. However, this potential can only be realised once issues around scale and definition have been addressed. In addition, successfully translating "resilience" into law requires a careful examination of the broader legal context in which it is applied, otherwise it risks locking in unintended consequences, such as outdated ways of using and producing electricity. 488

Competition or Collaboration? Using Legal Persons to Manage Water for the Environment in Australia and the United States – *Erin O'Donnell*

Environmental water managers (EWMs) are organisations with legal personhood, which have been created to acquire and manage water for the aquatic environment. This article explores the creation and operation of the EWMs of south-eastern Australia and the western United States and shows that the EWMs can provide a limited form of legal personality for the aquatic environment itself. However, the activities of the EWMs generate new narratives about the relationship between water users and their environment, emphasising competition (in Australia) and collaboration (in the United States). Both narratives generate a regulatory response that imposes legal limits on the EWMs that do not apply to other water users. This article shows an important and unexpected outcome of the creation and operation of the EWMs: although the EWMs increase the rights and powers of the aquatic environment in water law, they also reframe the environment as a mere participant in a water market, which weakens community support for strong environmental protection. This apparent paradox stems from the construction of the aquatic environment as a legal subject and has important lessons for the emerging jurisprudence of legal rights for nature. 503

"Seeing the Place Makes It Real": Place-based Teaching in the Environmental and Planning Law Classroom – *Estair Van Wagner*

This paper argues for a critical place-based approach to legal education. In particular, it presents a model for place-based teaching in land use and environmental law subjects based on theoretical and experiential foundations. Pedagogical critiques of environmental and property law teaching are examined in light of insights from legal geography and critical property theory in order to consider the role of legal education in the production of spatial relations. The author argues legal education can, and should, prepare legal graduates to understand and critically engage in the work of translation and transformation involved in land use disputes. Further, the author considers the need for a critical approach to place-based law teaching in order to address calls for the Indigenisation and decolonization of legal education. This paper considers the author's model, involving field trips, guest lectures, and blog-based case studies in light of student feedback and teacher experiences. Teaching and learning experiences are examined in order to assess whether the model successfully addresses the problems indentified in the theoretical literature and to identify limitations and areas for improvement. 522

The Sustainability Business Clinic – Australian Clinical Legal Education for a "New Environmentalism" and New Environmental Law – *Brad Jessup and Claire Carroll*

Australia is observing a "new environmentalism" – with the community shifting their attention away from government action towards enterprise collaboration and community organisation as a means of achieving environmental protection. Meanwhile, legal scholars are writing about a "fourth generation" of environmental laws which are "integrated" – more connected with other sub-disciplines of law. Scholars have also proposed a transformation of legal education that positions environmental problems within the domain of multiple subject areas. Within this community and scholarly context, Melbourne Law School conceptualised a novel legal clinic: the Sustainability Business Clinic. The clinic responds to current shifts in environmentalism and the evolution in goals of Environmental Law, both of which find little space in a didactic subject. As part of a larger research project into student experience of clinics, this article situates the Sustainability Business Clinic within the new environmentalism and argues that it best educates students about the new Environmental Law. 542

Implications of Indigenous Land Tenure Changes for Accessing Indigenous Genetic Resources from Northern Australia – *Fran Humphries, Daniel F Robinson and Heron Loban*

Genetic resources contain DNA and other genetic material necessary to sustain biodiversity and ecosystem services. Australia's biodiversity legislation regulates access to, and sharing the benefits of using, genetic resources. The Commonwealth government is considering its options for complying with obligations under the UN's Nagoya Protocol, including to allow for indigenous communities' prior informed consent for third parties accessing genetic resources over which they have "an established right to grant access". Meanwhile, it is pursuing its policy to "reform" indigenous land tenure to attract more intense development in northern Australia – the home to the majority of Australia's biodiversity. Using a Kakadu Plum example, and highlighting recent proposals for reform, this article analyses the connection between access and benefit sharing (ABS) and land tenure laws. It concludes that policymakers must consider the effects of land tenure "reform" on ABS frameworks to avoid undermining indigenous communities' current and future rights of consent for accessing and using biological and genetic resources from their land and waters. 560

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