

ENVIRONMENTAL AND PLANNING LAW JOURNAL

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ARTICLES

WATER LAW REFORM IN NSW – 1995 TO 1999

Poh-Ling Tan

This is the second of two articles by this author on water law reform in NSW. It considers important reform measures taken in the period from 1995 to late 1999. These measures include the trial of an environmental flows package; privatisation of irrigation schemes; revision of the scheme of control over floodplain work; introduction of a new harvestable right; introduction of volumetric controls over unregulated river systems; and the change in conditions of groundwater licences and floodplain work. In addition, the article explores legal issues arising from the first inter-sectoral transfer of water rights in NSW. Most of the measures are considered within the context of the Lachlan catchment 165

ENFORCING BYCATCH REDUCTION IN TRAWL FISHERIES: LEGISLATING FOR THE USE OF TURTLE EXCLUDER DEVICES

Warwick Gullett

The mandatory use of bycatch reduction devices (BRDs) in prawn trawl fisheries is now commonplace in Australia. BRDs are designed to allow unwanted or juvenile species to escape fishing nets with consequent benefits for the abundance of such species, species which prey on them, and general ecosystem integrity. In the Queensland East Coast Trawl Fishery, as well as in a handful of other Australian prawn trawl fisheries, specific turtle excluder devices (TEDs) are required to prevent turtles from entering the codend section of trawl nets. This article reviews international and Australian legal measures to protect turtles from prawn trawl fishing activities. It focuses on the difficult task fisheries officers in Queensland were presented with in 2002 when they attempted to prosecute two fishers for alleged non-compliance with their licence requirement to use a device which enables turtles to escape “immediately” after being taken in the net. A review is presented of this case which highlights the difficult task of securing convictions for alleged non-compliance with fisheries regulations where scientific uncertainty compounds the establishment of the required evidentiary burden of proof. The decision in the case exposes the challenge drafters of legislation face when they attempt to translate sound fisheries management objectives into effective and enforceable law..... 195

SAYING WHAT YOU MEAN AND MEANING WHAT YOU SAY: PRECAUTION, SCIENCE AND THE IMPORTANCE OF LANGUAGE

Felicity Nagorcka

The precautionary principle requires that courts and decision-makers give more weight to environmental concerns where the impact of a human activity is unknown or uncertain. While the principle has come rapidly to the forefront of environmental law, its meaning remains somewhat unclear. Understanding of the principle has not been aided by the failure of international bodies to use precautionary language, despite their seeming acceptance of the principle. Conversely, Australian courts and tribunals have demonstrated an enthusiasm for the language of precaution while failing to implement the principle in a meaningful way. For a principle which is so caught up in the complexity of fine distinctions, these failures can embed misunderstandings and render the precautionary principle significantly less effective than its potential would allow..... 211

INTEGRATED NATURAL RESOURCES MANAGEMENT IN AQUACULTURE: REALITIES AND POSSIBILITIES

Edward Ho-Shon

Environmentally sustainable aquaculture involves the application “of best practice in aquaculture so that ecological process, on which life depends, are maintained, and the total quality of life now and in the future can be preserved and enhanced. It does not pollute watercourses or groundwater, does not degrade soils on the land-use area, and ensures land-use options for future generations” 223

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