

ENVIRONMENTAL AND PLANNING LAW JOURNAL

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DESCRIBING AND LISTING THREATENED ECOLOGICAL COMMUNITIES UNDER THE THREATENED SPECIES ACT 1995 (NSW): PART 1 – THE ASSEMBLAGE OF SPECIES AND THE PARTICULAR AREA

Brian J Preston SC and Paul Adam

Threatened ecological communities can be listed on the Schedules of the Threatened Species Conservation Act 1995. The concept of an ecological community is relatively new in legislation, and is one that inherently embodies uncertainty. The definition of an ecological community adopted by the legislation requires that “an assemblage of species” and a “particular area” be specified. How these requirements have been met in the listing of endangered ecological communities is discussed.....250

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Karen Bubna-Litic and Dr Mariann Lloyd-Smith

This article examines the right to know and community consultation in chemical management in Australia in the context of the destruction of hexachlorobenzene at the Orica industrial site in Botany, Sydney. The case study research explores the facilitation of the environmentally sound destruction of possibly the world’s largest stockpile of HCB while supporting environmental justice for local residents. It also discusses the crucial factors common to toxic disputes, which must be addressed to reach a resolution. Part 1 of the article sets the framework for discussion of the case study while Part 2 deals with the actual case, covering the background and initial public participation protocol through to the Commission of Inquiry in 2002 and beyond.....264

WHY THE ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION ACT'S REFERRAL, ASSESSMENT AND APPROVAL PROCESS IS FAILING TO ACHIEVE ITS ENVIRONMENTAL OBJECTIVES

Andrew Macintosh

The Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) constitutes an improvement on previous Commonwealth environmental law, particularly the Environment Protection (Impact of Proposals) Act 1974 (Cth) and the Endangered Species Protection Act 1992 (Cth). Among other things, it introduced a new Commonwealth referral, assessment and approval process that is intended to provide protection for the so called "matters of national environmental significance", the environment on Commonwealth land and the environment generally where the relevant action is taken by the Commonwealth or a Commonwealth agency. This process is also intended to promote the ecologically sustainable use of natural resources and the conservation of biodiversity. However, after four years, there is mounting evidence that the referral, assessment and approval process is failing to achieve its environmental objectives. This article presents statistics on the operation of the referral, assessment and approval process between 16 July 2000 and 30 September 2003 and analyses why this process is failing to achieve its environmental objectives. The conclusion is reached that dramatic changes are required in both the way the EPBC Act is being administered and the structure of the referral, assessment and approval process if the objectives of this process are to be realised.288

ARE CRIMINAL PENALTIES THE MOST EFFECTIVE SANCTION FOR OFFENCES UNDER PT V OF THE ENVIRONMENTAL PROTECTION ACT 1986 (WA)?

Angela Hartley

Part V of the *Environmental Protection Act 1986* (WA) imposes a range of criminal penalties for actions resulting in pollution of the environment and breach of administrative controls in Western Australia. It creates limited administrative penalties for minor offences, however, the principal sanction remains prosecution for serious criminal offences. Given the difficulties associated with securing criminal convictions, this article examines the extent to which a comprehensive system of civil penalties, supplementing the criminal penalties, may provide regulators with greater flexibility to impose more effective sanctions on problem polluters. It is argued, based on the success of the United States Environmental Protection Agency, that a comprehensive system of civil penalties provides environmental regulators with the flexibility to impose sanctions that reflect the cost of repairing damage caused to the environment and/or the benefit of noncompliance with environmental legislation and it is suggested that Pt V be amended to provide for a comprehensive system of supplementary civil penalties.312

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