

# ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 22, Number 3

June 2005

## EDITORIAL COMMENTARY

**Smooth sailing for Australia's automatic forfeiture of foreign fishing vessels ..... 169**

THE GENE TECHNOLOGY ACT 2000 (CTH) AND THE LICENSING OF  
AUSTRALIA'S FIRST GENETICALLY MODIFIED CROP: A CASE STUDY IN  
IGNORING RISKS TO BIODIVERSITY

**Sara Kiyork**

The Genetically Modified Organisms debate is set to reignite following the Gene Technology Regulator's landmark approval for the first commercial release of genetically modified crops for human consumption. This article outlines the debate concerning the commercialisation of genetically modified crops in terms of its impact on the biological environment. In the face of this debate, this article discusses how the current regulation of genetically modified crops under the *Gene Technology Act 2000* (Cth) fails to adequately address the risks to biodiversity posed by the commercialisation of GM crops. In particular, this article analyses how the current risk assessment and management methodology applied by the Gene Technology Regulator, in addition to the lack of public participation under the Act, fail to adequately address the risk of adverse and irreparable impacts on biodiversity posed by the release of genetically engineered crops. It is suggested that systematic reform to the *Gene Technology Act 2000* (Cth) is required in order for the legislation to deal effectively with the management and regulation of genetically modified crops..... 174

## UP THE CREEK: WHAT IS WRONG WITH THE DEFINITION OF A RIVER IN NEW SOUTH WALES?

**Mark Taylor and Robert Stokes**

The legal definition of a river or stream has been largely determined from a European perspective of what a river “should look like”. In New South Wales, the definition of a river or watercourse is codified in a range of legislative instruments. In most cases, the *Rivers and Foreshores Improvement Act 1948* (NSW) and the partially implemented *Water Management Act 2000* (NSW) provide the basis for legal decision-making. The *Rivers and Foreshores Improvement Act 1948* implies that a bona fide river should have perennial and intermittent flow. However, it is well known that the Australian landscape is characterised by river systems that occupy the full range of discharge patterns from perennial to intermittent through to ephemeral. Thus, the *Rivers and Foreshores Improvement Act 1948* defines a river in manner that is quite uncharacteristic for many smaller watercourses in New South Wales, as these are frequently ephemeral. Consequently, the difference between the legal definition and the true physical form of a “watercourse” has created numerous disputes that have had to be settled by the courts. This article discusses the legal definition of river, and a range of geomorphological descriptions and perceptions of what a river is. To highlight the differences between legal and geomorphological definitions, we discuss a recent legal dispute that arose with respect to the definition of a watercourse at Lumley Park Farm, Bungonia, New South Wales along with the Farm Dams Policy 1999 (NSW), which was relevant to the case.<sup>193</sup>

## CURRENT AUSTRALIAN POLICY ON MARINE WILDLIFE BYCATCH

**Sali Jayne Bache**

Bycatch occurs because fishing methods are not perfectly selective, and threaten the sustainability of the ecosystem and the fishery. The capture of undersized fish impacts negatively on the future catch, long-term viability of a fishery, and the incidental take of large non-target marine wildlife or fish has the potential to alter predator-prey relationships. Internationally, bycatch has been recognised as a major fisheries problem. However, the rates of bycatch mortality can often be reduced, sometimes dramatically, through the employment of alternate management measures or catch methods .....<sup>212</sup>

## THE RELOCATION OF FLYING FOX COLONIES IN QUEENSLAND

**Dominique Thiriet**

This article examines the practice of relocating flying foxes in Queensland under damage mitigation permits issued in accordance with the *Nature Conservation Act 1992* (Qld). The author argues that relocation exercises are unjustified as they are mostly ineffective in achieving permanent movement of colonies. Instead such exercises result in stress and harm to the flying foxes and potentially interfere with their ecological roles. Flying fox relocations as they are commonly conducted in Queensland are inconsistent with ecological sustainability principles and appear to be driven by political decisions and media hype rather than by sound wildlife conservation principles .....<sup>231</sup>

# Guidelines for Contributors

## Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Environmental and Planning Law Journal*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to [eplj@thomson.com.au](mailto:eplj@thomson.com.au), for forwarding to the Editor. Licence agreements can be downloaded via the internet at [http://www.lawbookco.com.au/authorsupport/d\\_authorJournals.asp](http://www.lawbookco.com.au/authorsupport/d_authorJournals.asp). If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

## Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

## Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 10,000 words for articles or 1,500-2,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- Contributors of articles receive 25 free offprints of their article and a copy of the part in which the article is published. Other contributors receive a copy of the part to which they have contributed.
- All material published in this journal is refereed.

## Style

### 1. Levels of headings should be clearly indicated (no more than four levels).

### 2. Cases:

- Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
- Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
- “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
- Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
- For international cases best references only should be included.

### 3. Legislation should be cited as follows:

*Trade Practices Act 1974* (Cth), s 51AC. The full citation should be repeated in footnotes.

### 4. Books should be cited as follows:

Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.

- In footnotes do not use *ibid* or *op cit*. The following style is preferred:
  - 4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
  - 5. Austin, n 4, p 56.

### 5. Journals should be cited as follows:

Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.  
Wherever possible use official abbreviations not the full name for journal titles.

- In footnotes do not use *ibid* or *op cit*. The following style is preferred:
  - 6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
  - 7. Sheehy et al, n 6 at 221.

### 6. Internet references should be cited as follows:

Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit the Lawbook Co. website at <http://www.lawbookco.com.au> or contact the Production Editor.

## SUBSCRIPTION INFORMATION

The *Environmental and Planning Law Journal* comprises six parts a year.

Customer Service and sales inquiries:

**Tel: 1300 304 195**

**Fax: 1300 304 196**

**Web:** [www.lawbookco.com.au](http://www.lawbookco.com.au)

**Email:** [LRA.Service@thomson.com](mailto:LRA.Service@thomson.com)

Editorial inquiries:

**Tel: (02) 8587 7000**

### HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 0813-300X

Typeset by Lawbook Co., Pyrmont, NSW  
Printed by Ligare Pty Ltd, Riverwood, NSW