

ENVIRONMENTAL AND PLANNING LAW JOURNAL

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EDITORIAL COMMENTARY

Federal issues: Greentree appeal dismissed 325

LETTER TO THE EDITOR..... 326

REGULATING WATER POLLUTION FROM LIGHT INDUSTRY: LESSONS FROM THE SWAN-CANNING

Neil Gunningham and Darren Sinclair

This article examines policy mechanisms and instruments for curbing water pollution from light industry. It outlines the major challenges confronting regulators in addressing this elusive sector, as well as some of the limitations in current policy approaches. The key components of an effective strategy are described, together with the possible roles of various institutional actors and a range of potential surrogate regulators. This is the third in a series of policy discussions placed in the context of the Swan-Canning river catchment, a region that has experienced high levels of water pollution. 328

THE NEW REGULATORY CHALLENGE: DESIGNING OPTIMAL ENVIRONMENTAL REGULATION FOR SMALL TO MEDIUM SIZED ENTERPRISES

Katherine Watson

The effective regulation of the environmental performance of small to medium sized enterprises (SMEs) remains a significant policy challenge. Current regulatory approaches fail to address the unique management characteristics particular to SMEs, which prevent them from improving their environmental performance. The regulatory design process and principles advocated by Gunningham and Sinclair may provide policy makers with a strong framework to design optimal environmental regulation for SMEs. However, this theoretical framework must be supplemented by the additional principle requiring the establishment of strong cooperative environmental networks to ensure the effective engagement of SMEs and the delivery of even more effective regulation. Under this enhanced design framework, policy makers may not only regulate the environmental behaviour of SMEs, they may also assist them to respond quickly – to innovatively and strategically capitalise upon emerging business opportunities and become both more environmentally and economically sustainable. 350

MEDIATION OF ENVIRONMENTAL CONFLICTS

Laura Horn

Is mediation a suitable method of dispute resolution in situations where the environmental conflict involves issues of public interest? This question is addressed by examining the philosophy of mediation. Five philosophical underpinnings of mediation are criticised as inadequate when applied to environmental conflicts. There is also a risk that fundamental environmental concepts (which are in the process of being developed in international law and in Australian environmental law) will fail to be adhered to when environmental conflicts are mediated. Finally, the answer to this question also depends upon the standard of accountability of mediators and whether they are responsible for the quality of the outcome of the agreed settlement. At present the New South Wales Land and Environment Court offers mediation and neutral evaluation as methods of dispute resolution in certain classes of conflicts. The trend towards mandatory mediation has occurred in some jurisdictions such as in the Supreme Court of New South Wales, however, it is argued that this movement should not extend to environmental conflicts.369

AUSTRALIAN WORLD HERITAGE, THE CONSTITUTION AND INTERNATIONAL LAW

David Haigh

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) provides the legal regime for management of Australian World Heritage Areas. It purports to implement Australia's duty as a State Party to the World Heritage Convention to do all it can to the best of its resources to protect, conserve and present World Heritage Areas. This article challenges this contention. The Act implements the duty by providing protection for World Heritage Values, in contradiction of the outcome of a recent review of the Convention's Operational Guidelines. The review asserted that a State Party has a duty to protect the World Heritage property or area's integrity or authenticity. Consequently, this article contends that a constitutional challenge is possible to the World Heritage provisions of the Act.385

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