

ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 22, Number 6

December 2005

THE LAND AND ENVIRONMENT COURT'S PLANNING PRINCIPLES: RELATIONSHIP WITH PLANNING THEORY AND PRACTICE

Peter Williams

A significant recent development in some determinations in the merit appeal jurisdiction of the Land and Environment Court has been for Commissioners to include "planning principles" in their written decisions. This article expresses qualified support for the planning principles. The principles have a valuable role to play in ensuring consistency in the determination of merit appeals by the court. However, a cautious and considered approach should be exercised to justify the broader application of the principles to the formulation of planning controls and development assessment by local councils and the design of development proposals by developers and architects.401

IS THERE THE NEED FOR A COMMISSION ON ENVIRONMENTAL COOPERATION FOR MANAGING AUSFTA?

Rebecca Connolly

The Australia-United States Free Trade Agreement (AUSFTA) devotes a chapter to the environment but does not adopt the framework for environmental cooperation championed by the North American Free Trade Agreement. This article considers the environmental provisions in the AUSFTA, including dispute resolution of environmental issues and the operation of the Joint Committee. These provisions are then contrasted with the framework under the North American Agreement on Environmental Cooperation and in particular, the role, function and effectiveness of the Commission on Environmental Cooperation (CEC). The need for a CEC-like body for AUSFTA is evaluated. It is proposed that the AUSFTA could be amended to provide for a citizen-submission process and monitoring of environmental impacts.409

POTENTIAL EXPOSURE TO LEGAL LIABILITIES FOR THE SUPPLY OF RECYCLED WATER AND BIOSOLIDS

Henry Jackson

Water is increasingly recognised as a resource under considerable pressure. One method of relieving that pressure that is achieving considerable support is the use of recycled water as a substitute in applications where previously potable or raw water was used. The large scale supply of recycled water is, inevitably, undertaken by government or semi-government agencies as the operators of sewage/waste-water treatment infrastructure. This article seeks to understand the potential legal liabilities to which these agencies are exposed. In doing so, it considers both criminal and civil liabilities under Victorian and Commonwealth statute as well as the common law.418

RISK OF FUTURE REDUCTION IN WATER AVAILABILITY FROM THE CONSUMPTIVE POOL: CURRENT ISSUES AND APPROACHES IN NEW SOUTH WALES

Cameron Herbert

There has been much recent regulatory activity in the water sector in New South Wales, including an Intergovernmental Agreement on the National Water Initiative, significant changes to the *Water Management Act 2000* (NSW), a State Water Management Outcomes Plan as well as new Water Sharing Plans. A key objective of this regulatory activity has been to encourage sustainable usage of available water. Environmental, economic, social and community interests must all be balanced when allocating water between users. However, changes in climate, scientific knowledge, and user demands – as well as political and legislative change over time – all contribute to making this a difficult balance to achieve in practice. Potential consequences of these “risk factors” include the scaling back, or even cancellation, of existing water access entitlements at some point in the future. This article examines these risk factors in the context of the current water management regime in New South Wales and then considers the concept of “risk sharing” between entitlement holders and government, including the “workability” of the risk sharing model proposed in the Intergovernmental Agreement.431

A CRUMBLING WALL: THE THREATENED SPECIES CONSERVATION ACT 10 YEARS ON

Garth Riddell

After 10 years in operation the *Threatened Species Conservation Act 1995* (NSW) has not met its primary objectives. Although it has made a small contribution to the conservation of biological diversity and the promotion of ecologically sustainable development, it has not gone far enough. The Act’s protections are procedural rather than substantive, its provisions are placatory rather than effective and its operation has been hampered by a lack of funding, lack of will and widespread misunderstanding of the concepts underlying it. Recent amendments will do little to alleviate these problems. The Act is like the Berlin Wall – it is only as effective as the system that guards it.446

THE CONSERVATION OF MARINE BIOLOGICAL DIVERSITY IN AREAS BEYOND NATIONAL JURISDICTION

Mathias Pecot

As a source of ecological balance and a valuable economical resource, marine biological diversity is doubtless a global environmental concern. The alarming rate of degradation directly calls into question the responses provided under the laws of ocean governance. This article focuses on marine biological diversity in “areas beyond national jurisdiction” (ABNJ) under the 1982 United Nations Convention on the Law of the Sea. It provides an overview of the present conservation regime. The first diagnosis is that the conservation of marine biodiversity in ABNJ is filled with gaps: gaps in mandate or competence, gaps in the exercise of existing mandates and institutional gaps. The ever-increasing need for conservation is therefore not satisfied. The downfall of high seas freedom as a leading principle in ABNJ governance and the plausible revitalisation of the Common Heritage of Mankind are to be expected in order to obtain further guarantees towards a sustainable management.459

CASENOTE469

INDEX475

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, for forwarding to the Editor. Licence agreements can be downloaded via the internet at 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:**
Rickatson 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

Email: 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