

ENVIRONMENTAL AND PLANNING LAW JOURNAL

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EDITORIAL COMMENTARY 417

ARTICLES

Strategic land use planning: Experiments in legislation and governance – *Alan Hutchings*

A strategic viewpoint lies at the heart of land use planning. Over the past half-century, legislation has been promulgated for strategic land use planning in the states and territories of Australia. Using South Australia as a case study, this article considers the series of planning statutes from the 1967 *Planning and Development Act* to the *Development (Sustainable Development) Bill* first introduced in 2004. It discusses the administrative arrangements and policy instruments each statute put in place and the changing climate of governance over the decades. It also discusses the tensions inherent in the Westminster form of cabinet government (a “federation” of ministries and departments) when it comes to co-ordinating policies and programs and how it differs from the corporate approaches of local government and private enterprise. It concludes that while strategic land use planning has often been successful at city or regional level, difficulties remain at state level. Challenges in drafting appropriate and effective statutes are still to be addressed. 426

Indigenous commercial fishing rights in Queensland: When is commercial “traditional”? – *Peter Wulf*

The rights of Indigenous peoples to engage in commercial fishing have been constantly debated for many years, particularly with respect to defining what is “traditional”. Recent decisions of the Federal and High Court of Australia have provided extremely limited ability for indigenous people to have access to the economic and social benefits of commercial fishing rights. However, the decision of *Stevenson v Yasso* in the Queensland Court of Appeal with respect to the interpretation of important sections of the *Fisheries Act 1994* (Qld) may allow indigenous people greater access to this valuable resource. The decision indicated that the use of commercial fishing equipment could be considered “traditional”. More importantly however, Fryberg J suggested that the relevant section of the Act “intended (among other things) to allow Aboriginals and Torres Strait Islanders to take fisheries resources in trade or commerce or ‘in a commercial manner’ without compliance in all respects with the Act”. The judgment has important ramifications for the rights of indigenous Queenslanders to undertake commercial fishing activities that could be considered traditional. Further, it establishes a statutory defence for indigenous Queenslanders to undertake activities that in other Australian jurisdictions have previously been found to be in violation of statutory provisions. 433

Environment Improvement Plans: Facilitative regulation in practice – *Cameron Holley and Neil Gunningham*

Facilitative regulation embodies regulatory flexibility, the empowerment of local communities and devolved, collaborative decision-making. Based on interviews with key stakeholders, this article examines one the most important examples of facilitative

regulation, the Environment Improvement Plan (EIP). This article begins by connecting the EIP to broader shifts in the styles and practices of environmental regulation, it then outlines the achievements of the EIP instrument, as well as some of its limitations and the challenges confronting its successful implementation. In particular, the analysis finds that while the EIP can achieve a shift in both the thinking and performance of many large enterprises, over time, EIPs tend to produce diminishing returns, suggesting a “life cycle” theory of EIP effectiveness. Policy and theoretical implications flowing from these findings are also explored. 448

The interplay of international law and domestic law: The case of Australia’s efforts to protect whales – Sam Blay and Karen Bubna-Litic

Whaling in general, and Japanese “scientific whaling” in particular, is a vexed issue that requires urgent attention. There seems to be insufficient international support for the conservation of whales. Australia’s attempts to outlaw whaling in the AWS with the EPBC Act therefore stands out as a laudable step that should be emulated by the rest of the international community. Whaling in international waters, however, is an international issue. It is therefore doubtful if Australia can use the EPBC Act to archive the objective of protecting whales in the Antarctic without breaching its international obligations. In the struggle to achieve an international ban on commercial whaling, the case of Humane Society International v Kyodo Senpaku Kaisha Ltd is thus hardly a victory. The courtroom is not an appropriate battlefield if Australia is to win the battle to stop commercial whaling. The environmental movement needs to rethink its strategies with a new focus on international law and diplomacy. 465

Corrigendum

Please note that in Mark Tranter’s article “Two Towers: A comparison of the regulatory regimes which affect new electricity transmission lines and wind farms in Queensland” (2006) 23 EPLJ 351 at 364, the map supplied is from Powerlink Queensland, *Final Recommendation – Emerging Network Limitations Darling Downs Area* (July 2003).

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5. Austin, n 4, p 56.

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7. Sheehy et al, n 6 at 221.

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