

# ENVIRONMENTAL AND PLANNING LAW JOURNAL

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## ARTICLES

### **More than tilting at windmills: A bird's eye view of a bio-offsets scheme under the EPBC Act** – *Rebecca Nelson and Bethany Sharman*

The Commonwealth government's environmental approvals power under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) has recently come under scrutiny in the context of proposed wind farms. This article argues that there is scope to amend that Act to better protect endangered species from uncertain threats such as wind farms by using a biodiversity offsets bank scheme to establish areas specifically managed for conservation benefits. Such a scheme would grant productive land a biodiversity value so that conservation can compete with other uses, as well as improve the efficient, transparent and accountable administration of the EPBC Act. The suggested reform is consistent with the existing provisions and objects of the EPBC Act, it would preclude the ad-hoc and potentially unlawful circumstances of the offsets currently administered under the Act and it would ensure the Commonwealth government is in step with State and international trends in effective environmental regulation. Most importantly, it would promote more systematic and strategic biodiversity conservation in Australia. .... 17

### **Transnational environmental litigation** – *Ralph Kaye*

Actions in tort arising from transnational pollution and from polluting activities of foreign-based multinational corporations are discussed from an Australian perspective. Various countries may have different rules of substantive and procedural law. Cases involving local activities of transnational corporations present special difficulties. Forum non conveniens and the local action rule operate as controls on jurisdiction in some common law countries. Choice of law rules also present difficulties for litigants. Australia is the only common law country that applies the substantive law of the *lex loci delicti* model inflexibly. In Australia, a uniform approach needs to be taken to ensure that the local action rule is not used to exclude claims for damage to foreign land. Recognition should be given to the special disability under which the plaintiff is placed in determining choice of law in environmental torts. .... 35

### **Out of the "too hard basket" – Traditional hunting and animal welfare** – *Dominique Thiriet*

Although traditional hunting has been considered thoroughly in the context of ecological sustainability and native title rights, the animal welfare dimension of traditional hunting practices has been largely ignored. This article examines the current legislative framework which regulates the welfare of wild animals subject to traditional hunting in Australia. It considers the animal protection context in which such hunting takes place and reviews Indigenous and non-Indigenous attitudes towards wild animals. The author argues that

inconsistent legislation, inadequate enforcement and a lack of debate on the issue contribute to perpetuating unnecessary cruelty. The protection of animals targeted in traditional hunting in overseas jurisdictions is also considered. ....	59
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