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LETTER TO THE EDITOR 157

ARTICLES

Can environmental regulation constitute a taking of property at common law? – *Kevin Gray*

We live, profoundly, in an age of regulation. Much of this regulatory activity is aimed at the promotion of environmental welfare, a term which I understand as referring not merely to the conservation of natural landscape and protection of the ecosphere, but also to the safeguarding of our cultural, archaeological and architectural heritage. Can environmental regulation amount to a taking of property at common law? That is a straight question; and it deserves a straight answer. The trouble is that, in this area, straight answers are in very short supply. One thing is sure. Our inquiry into this matter will certainly take us well “beyond environmental law” into complex areas of political and philosophical concern. We will be forced to look deep into the inner meaning of the ancient and extraordinary institution that we rather loosely call “property”. We will have to define the social limits of ownership. We will have to debate the correct political balance between individual and community interests. We will be required to examine the interaction of human rights and civic duties. Our inquiry will ultimately comprise an exploration of the implicit content of “citizenship”. For, in discussing the subject of “regulatory taking”, we are doing neither more nor less than working out a modern civic morality of property. In the process, we may have to recognise that we are moving into an area where conventional understandings of property have steadily decreasing coherence or utility. 161

Setting climate change targets to protect the Great Barrier Reef – *Chris McGrath*

This article examines what targets should be set to avoid severe impacts to the Great Barrier Reef from climate change. Policy targets of stabilising atmospheric greenhouse gases and aerosols at 450-550 parts per million carbon dioxide equivalents, to limit increases in mean global temperatures to 2-3°C over pre-industrial levels, are likely to be too high to avoid severe impacts of coral bleaching on the Great Barrier Reef. Stabilising greenhouse gases and aerosols around year 2000 levels, giving a net effect of around 370 parts per million carbon dioxide equivalents, and allowing a rise in mean global temperatures of 1°C, appear to be the highest targets that should be set if the Great Barrier Reef is to be protected from serious degradation. Current policies are far from achieving or even setting these objectives and, consequently, severe impacts to the Great Barrier Reef are likely in coming decades. 182

Can the World Heritage Convention be adequately implemented in Australia without Australia becoming a party to the Intangible Heritage Convention? – *Isabelle Connolly*

Most Australian World Heritage sites inscribed for natural values under the Convention Concerning the Protection of the World Cultural and Natural Heritage also contain indigenous cultural heritage values. This article examines how effectively the Australian government can use the World Heritage Convention as a tool to protect intangible

indigenous cultural heritage including cultural landscapes whether those values are recognised as being of World Heritage value or not. It also examines the potential of the new Convention for the Safeguarding of the Intangible Cultural Heritage to protect indigenous cultural heritage values and discusses the pros and cons of Australia becoming a party to the new Intangible Heritage Convention. It will be argued that these two Conventions are intended to work together to provide a mechanism for effective identification, safeguarding, awareness, protection, and conservation of both tangible and intangible heritage. 198

The statutory relevance of greenhouse gas emissions in environmental regulation – *D E Fisher*

The discharge of noxious or polluting substances into the environment is currently controlled by the law in a number of ways. These include a range of statutory arrangements for environmental planning and environmental protection. Are greenhouse gases noxious or polluting substances within the meaning of these statutory arrangements? If so, does climate change as a possible consequence of greenhouse gas emissions fall within the scope of these arrangements? The answer to these questions depends to a large extent upon the precise language of the legislation, how it is structured and the function it is designed to perform. This article seeks to respond to these questions by reviewing the current environmental planning and environmental protection legislation in each of the states in Australia and by analysing four recent judicial approaches to these issues. 210

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