

# ENVIRONMENTAL AND PLANNING LAW JOURNAL

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ARTICLES

**To breed or to exhibit?: The Asian Elephants case and reasons for regulatory failure – Margaret Allars**

The Asian Elephants case is best known as a challenge in the Administrative Appeals Tribunal to a decision to permit the importation of eight Asian elephants to be exhibited in zoos in Australia. Without attempting to enter the issues of the merits as they were determined by the Tribunal, such as the arrangements made by the zoos for the welfare of these animals, this article addresses the adequacy of the regulatory framework for the issue of such permits. It is argued that Pt 13A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) fails to make proper provision for compliance by Australia with the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The central failure is a neglect of the purposes of the importer, a matter which is highlighted by consideration of administrative law principles relating to improper purpose. .... 329

**Good faith in environmental alternative dispute resolution: When “any road” won’t do – Kelly Casey**

ADR is now recognised as a legitimate (and enforceable) alternative for parties who have determined, contractually or otherwise, that courts are an inappropriate forum for the determination of conflict. That said however the uniform application of a traditional dispute resolution paradigm (incorporating an ADR framework), will not always be appropriate in the context of environmental conflict, an area which requires if not adherence, certainly reference to, environmental touchstones. It is argued that the integration of a suitably amended construct of good faith is an appropriate vehicle for remedying ADR’s inherent flaws. Both good faith and ADR are characterised by their flexibility and inherent capacity for change. Good faith remains open to interpretation in that it is a principle capable of operating in such a way as to promulgate eco-centric values while retaining its salient characteristics as an obligation arising as between the parties. .... 346

**Emissions trading, offsets and other mitigation options for the Australian coal industry – Nicola Durrant**

Recent years have seen a significant increase in environmental litigation against the Australian coal industry, seeking to hold it responsible for the downstream impacts of the use of Australian coal. The purpose of this paper is to consider the range of mitigation options reasonably open to the coal industry and to analyse the key legal issues in undertaking initiatives to acquire carbon credits, generate offsets and otherwise mitigate coal-related greenhouse gas emissions. .... 361

**Climate change, light-duty motor vehicles and the Stern Review: Environmental law and policy measures to reduce passenger vehicle CO<sub>2</sub> emissions – Owen Cordes-Holland**

In 2006, the Stern Review predicted dire consequences for the world's economy unless atmospheric greenhouse gases, responsible for climate change, are prevented from reaching dangerous levels. The Review identified transport as one of the fastest growing sources of global emissions and the motor vehicle sector, in particular, as a significant contributor to this growth. This article argues that governments should adopt three broad aims to guide their strategies to reduce carbon dioxide emissions from the passenger vehicle sector: stimulating production of low-emission vehicles; encouraging consumers to purchase low-emission vehicles; and reducing motor vehicle travel and ownership. Drawing on the legislative and policy efforts of several jurisdictions worldwide, the environmental laws and policies which can implement these aims are identified. This article further explains how these measures can give effect to the key policies the Stern Review argued are required to address climate change: carbon pricing; technology policy; and the removal of barriers to behavioural change. In addition, it is suggested that developing countries must attempt to "leapfrog" reliance on conventional vehicle technology. The potential for the Kyoto Protocol's Clean Development Mechanism to assist this process is therefore briefly explored. .... 382

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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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