

ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 24, Number 6

November 2007

ARTICLES

A risky climate for decision-making: The liability of development authorities for climate change impacts – *Jan McDonald*

This article explores the legal issues arising from how decision-makers are responding to the predicted impacts of climate change. Throughout Australia, local governments and development authorities are having to consider the risks of storm surges, extreme weather events, bushfires, and coastal zone erosion. With increased scientific consensus over the likely range of impacts, every decision that is made now carries a risk of legal exposure. This risk will have flow-on implications for financiers and insurers of both individual properties and government agencies and projects. Judicial consideration of climate impacts is only just beginning, but this lag time is unlikely to insulate decision-makers in future disputes or claims. Decision-makers need to make the risks of climate change-induced impacts an explicit part of their decision-making criteria or risk unpredictable future liability. 405

In the spotlight – The welfare of introduced wild animals in Australia – *Dominique Thiriet*

This article examines the current policy and legislative framework which regulates the welfare of introduced animals in various Australian jurisdictions. It considers how inadequate legislation, unenforceable codes of practice and negative community attitudes contribute to legalised acts of cruelty against unpopular animals. Building on nascent community and government concerns, the author proposes reform to achieve a more humane and effective system. 417

Biodiversity offsets and native vegetation clearance in New South Wales: The rural/urban divide in the pursuit of ecologically sustainable development – *David Farrier, Andrew Kelly and Angela Langdon*

This article compares and contrasts regulation of native vegetation clearance in areas of New South Wales covered by the *Native Vegetation Act 2003* with the very different approach taken in urbanising areas of the state under the *Environmental Planning and Assessment Act 1979*. The former is characterised by absolute prohibitions on clearing in some contexts, eg threatened ecological communities which are in moderate condition, and elsewhere requires proposals to “improve or maintain” environmental outcomes. This test can be satisfied by compensating for on-site damage caused by vegetation clearance with environmental management actions (offsets) carried out elsewhere. The issue is an empirical one, determined by a scientific methodology designed to replace like with like, or better. Under the EPAA, on the other hand, the extent to which clearing is regulated usually depends on the provisions of local plans, and, where consent is required, decision-makers exercise broad discretion in weighing up competing values. There is a persuasive argument that the planning system is structurally biased in favour of development proposals. On top of this, there is no consistent policy with regard to offsets in urbanising areas. Indeed, it is unclear whether local councils even have the power to

impose them as conditions of consent where they cannot reach agreement with proponents. Even with the implementation of biobanking under the *Threatened Species Conservation Act 1995*, development proposals will not be required to meet an “improve or maintain” test or to provide offsets. This disjunction between regulation in rural and urban areas has substantial implications for both the range of biological diversity conserved and who bears the cost of conserving it. 427

Chasing down the climate change footprint of the public and private sectors: Forces converge – Part II – Rosemary Lyster

Part II of this article discusses and analyses the various emissions trading schemes that have emerged around the world, with the imprimatur of the Kyoto Protocol, to reduce greenhouse gas emissions. The emissions trading schemes are analysed against a theoretical model for designing an ideal emissions trading scheme. The schemes include the European Union Emissions Trading Scheme, the Regional Greenhouse Gas Initiative in the United States as well as schemes proposed under the *United Kingdom Draft Climate Change Bill 2007*, the *United States Climate Stewardship and Innovation Act 2007*, the New Zealand Emissions Trading Scheme and the two different schemes proposed for Australia. The state of the world carbon market, particularly the derivatives market, and the emergence of carbon funds are discussed to demonstrate the exponential growth in carbon trading. The liquidity and efficiency of the world carbon market will depend to a large extent on the ability to link the existing and proposed emissions trading schemes, either on a regional or global basis. 450

VOLUME 24 – 2007

Table of Authors	481
Index	483

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.thomson.com.au/support/as_contributors.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.

This journal complies with the Higher Education Research Data Collection (HERDC) Specifications for peer review. Each article is, prior to publication, reviewed in its entirety by a suitably qualified expert who is independent of the author.

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:

Ricketson 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 <http://www.thomson.com.au/legal/> or contact the Production Editor.

SUBSCRIPTION INFORMATION

The *Environmental Planning and Law Journal* comprises six parts a year.

Customer service and sales inquiries:
Tel: 1300 304 195 Fax: 1300 304 196
Web: www.thomson.com.au/legal/p_index.asp
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