

ENVIRONMENTAL AND PLANNING LAW JOURNAL

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EDITORIAL COMMENTARY

- Caught: Hook, line and sinker – The prosecution of fish poachers in Australian waters** 5

ARTICLES

Creative sentencing – Using the sentencing provisions of the South Australian Environment Protection Act to greater community benefit – David Cole

Should corporate environmental crime be the subject of sentencing approaches by Australian courts that are more imaginative than simply the imposition of fines or, very rarely, imprisonment of responsible corporate officers? Section 133 of the *South Australian Environment Protection Act 1993* provides the Environment, Resources and Development Court with the power to impose ancillary orders when sentencing for environmental crimes. These include environmental community orders and “naming and shaming” requirements. However, no order of either type has been imposed by the court. This contrasts with the approaches of New South Wales and Victorian courts that regularly impose such orders on environmental offenders. There would appear to be sound arguments for the South Australian Environment Protection Authority’s adopting a policy that encourages the use of s 133 when submissions on penalty are made for offences committed under the *Environment Protection Act*. 13

Resolving the regulatory conflict: Lessons for Australia from the European experience of regulating the release of genetically modified organisms into the environment – Claire Deakin

Although the *Gene Technology Act 2000* (Cth) was intended to introduce a nationally consistent framework governing the release of genetically modified organisms into the environment, regulatory conflict has arisen as a consequence of State moratorium legislation. This article critiques the response of the Statutory Review of the *Gene Technology Act 2000* and the Gene Technology Agreement to the issues that have emerged in the Act’s operation, particularly the limited scope of the Act and the State moratoria. The developments towards regulatory harmonisation in the European Union are then examined in order to identify lessons for resolving the regulatory conflict in Australia. It is argued that the European measures for developing a coexistence framework, clarifying remedies, consistent application of the precautionary principle, and provision for public participation in decision-making would advance the regulation of agricultural biotechnology in Australia. 22

Managing and protecting environmental water: Lessons from the Gwydir for ecologically sustainable water management in the Murray Darling Basin – Anita Foerster

This article considers one example of the environmental water regimes negotiated as part of Water Sharing Plans under the *New South Wales Water Management Act 2000: The*

Gwydir Regulated River. The early implementation of the Gwydir environmental flow rules highlights the importance of building an accountable, appropriately skilled and well-resourced management framework for environmental water. It also provides a chance to assess the extent and effectiveness of the legal protection offered to environmental water under the New South Wales legislation as it plays out on the ground. Without a strong framework for implementation, the value of an environmental water regime, even if it is of appropriate magnitude and character, will be undermined. The lessons learnt to date in New South Wales can inform current and ongoing discussion about achieving sustainable water management in the Murray Darling Basin in the context of increasing water scarcity under climate change scenarios, and the expansion of federal government involvement in environmental water management. 49

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Editorial inquiries:
Tel: (02) 8587 7000

HEAD OFFICE
100 Harris Street PYRMONT NSW 2009
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