

ENVIRONMENTAL AND PLANNING LAW JOURNAL

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ARTICLES

Operating an environment court: The experience of the Land and Environment Court of New South Wales – *Hon Justice Brian J Preston*

The Land and Environment Court of New South Wales was the first specialist environment court established as a superior court of record in the world. This article will first provide an outline of the court, explaining its history and the purpose of its establishment, its comprehensive jurisdiction and caseload. Secondly, the article examines how the court is moving towards functioning as a multi-door courthouse, offering various dispute resolution services. Thirdly, the article elaborates on the court’s duty to facilitate the just, quick and cheap resolution of the real issues in proceedings, and discusses the means to achieve this goal. Fourthly, the article canvasses how the court measures its performance in achieving equity, efficiency and effectiveness. Fifthly, the article identifies ways in which the court upholds the principles of accountability and transparency, paramount to the administration of justice and public confidence in the court. Finally, the article brings the discussion together by isolating at least a dozen benefits to the system of justice that have been generated by the establishment and operation of the court. 385

Public interest litigation and the Environment Protection and Biodiversity Conservation Act – *Rachel Baird*

The third party standing provisions in the Environment Protection Biodiversity Conservation Act 1999 (Cth) are generous and permit a wide scope of review by environmental interest individuals and groups. A number of high profile proposals have been challenged in various ways providing the Federal Court with the opportunity to consider the application of the Act to referrals, assessment methods, preliminary works and assessment bilateral agreements. The decisions reviewed in this article provide guidance for future proponents in the formulation of referrals and progressing their referrals. Costs orders in “public interest litigation” are also reviewed. 410

Presenting scientific evidence in environmental court cases: How science and law meet – *April Muirden and Associate Professor John Bailey*

Science and law come together when expert evidence is presented in court cases. This research examined the main systems that have been used by the courts for the presentation of expert evidence particularly in reference to environmental cases. Utilising a literature review and interviews with participants in the court process, 10 criteria that described the attributes of a system that would best promote a fair trial were used to assess the main systems of examining expert evidence used in the Australian courts: the adversarial system, the adversarial-inquisitorial, the court appointed expert, the expert assessor and the panel systems. It was concluded that the adversarial-inquisitorial and panel systems performed significantly better than the other three systems, although some issues were not well resolved by any of the systems. 425

Retrospective approvals, consents and certificates in New South Wales – Ian Ellis-Jones

For the most part, superior courts in New South Wales have been reluctant to embrace the concept of a so-called “retrospective” (or ex post facto) approval or consent in the context of a statutory scheme for obtaining some form of approval, consent or certificate. However, the case law on this matter has by no means been entirely consistent or predictable, and various judges have approached the matter in different ways, resulting in some confusion. The author submits that the whole idea of a retrospective or ex post facto approval, consent or certificate is misguided and not in the public interest, and that attempts to justify their invocation are generally forced and artificial in nature. It is one thing to provide an opportunity to deal with anomalies in design unforeseen at the date of granting an approval or a consent, it is another to give encouragement, tacit or otherwise, and even retrospective approval, to persons who deliberately offend against the terms of an approval or a consent for their own personal or private benefit and often to the detriment of adjoining or adjacent landowners and residents, not to mention the public at large. 449

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