

ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 26, Number 2

March 2009

EDITORIAL COMMENTARY

- Bankruptcy – The price for seeking to protect Indigenous rights?** 81

ARTICLES

The Garnaut Review's targets and trajectories: A critique – *Andrew Macintosh*

The Garnaut Climate Change Review was the most comprehensive government inquiry into climate change that has ever been conducted in Australia. The Final Report of the Review was published in late September 2008 and contains an extensive list of recommendations on adaptation and abatement policy options. Most controversially, the Review argues that Australia's climate response should be built around gaining an international consensus on stabilising the atmospheric concentration of greenhouse gases at 550 parts per million (ppm) of carbon dioxide equivalents (CO₂-e). While arguing that a lower stabilisation target of "450 ppm or less" would better suit Australia's interests, the Review concludes that anything significantly below 550 ppm is politically unrealistic. If there is a global agreement to pursue a 550 ppm outcome, the Review argues that Australia's mid- and long-term targets should be to reduce emissions net of international trading by 10% from 2000 levels by 2020, and 80% by 2050. This article provides a critique of the Review's mitigation recommendations, focusing on whether the proposed global and national targets are likely to lead to a 550 ppm outcome. It concludes that the international community, and especially Australia and other developed countries, should adopt abatement targets in excess of those proposed by the Review if there is a desire to keep the atmospheric concentration of greenhouse gases to 550 ppm. 88

Merits review of Commonwealth environmental decision-making – *Jason Cabarrús*

Executive government decision-makers, such as Ministers and statutory authorities, play a central role in environmental regulation in Australia. Merits review provides a flexible and appropriate system for reviewing government decision-making, offering potential benefits such as increased accountability and improvements in decision-making. The Administrative Appeals Tribunal is the Commonwealth's generalist merits review tribunal and has the power to review a range of environmental decisions made by Commonwealth government decision-makers. This article explores the features of the AAT that make it suitable for merits review of environmental decisions, and that enable it to deal with particular problems, such as complexity, cost and delay, that arise in environmental disputes. The article also examines the efficacy of AAT decision-making in this area, and considers the possibility of reforming the tribunal's jurisdiction to extend the benefits of merits review to an increased range of Commonwealth environmental decisions. 113

Biocertification of local environmental plans – promise and reality – Isabelle Connolly and Martin Fallding

Amendments to the Threatened Species Conservation Act 1995 (NSW) in 2004 provided for biodiversity certification (or biocertification) of land-use planning instruments prepared under the Environmental Planning and Assessment Act 1979 (NSW). The concept is that at the land-use plan making stage, biodiversity values will be considered in the planning process and where these values are maintained or improved, a plan will be certified. Where land to which a plan applies is biocertified, there would be no requirement to undertake a site-specific threatened species assessment (commonly known as the seven part test) under s 5A of the Environmental Planning and Assessment Act when a development application is assessed. A key objective of biocertification is to facilitate strategic planning for biodiversity and threatened species in the plan making process, and to reduce uncertainty and assessment requirements for development applications. The article reviews the implementation of biocertification and the implications for future legislative and policy approaches to the consideration of biodiversity and threatened species in strategic land-use planning. 128

Interactions between petroleum operations and carbon capture and storage operations in Australian offshore waters – Martin Edwards

This article will provide a discussion on the interactions between the management of petroleum resources under the Offshore Petroleum Act 2006 (Cth), and the management of injection of carbon dioxide into geological storage formations under the Offshore Petroleum (Greenhouse Gas Storage) Amendment Bill 2008 (Cth). The article will examine how the amendments propose to strike a balance between the at times competing interests of companies extracting petroleum, and companies desiring to sequester carbon dioxide into geological storage formations; this will include a discussion on rights and security of title held by petroleum operators pre- and post-commencement of the amendments, the application of the “significant risk of a significant adverse impact test” and the “public interest test” in managing interactions. 152

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SUBSCRIPTION INFORMATION

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

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THOMSON REUTERS

© 2009 Thomson Reuters (Professional) Australia Limited
ABN 64 058 914 668

Lawbook Co.

Published in Sydney

ISSN 0813-300X

Typeset by Thomson Reuters (Professional) Australia Limited, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW