

ENVIRONMENTAL AND PLANNING LAW JOURNAL

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ARTICLES

Solar access law: 30 years on – *Adrian J Bradbrook*

As energy production and consumption constitute approximately two-thirds of all global atmospheric carbon emissions, energy law reforms will be essential if the world is to tackle seriously the problem of climate change. One of the major changes will be the rapid expansion of solar energy. This will not occur unless householders and businesses that install solar collector panels on their properties can be assured that their investment will not be wasted as a result of shading caused by the activities of the owners of neighbouring properties. This problem was identified in legal circles in Australia in 1978, when the Law Reform Committee of South Australia produced a report on solar access. This article examines the that have occurred in this area of law over the past 30 years at State and local government level, as well as in the courts.

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Planning for coastal climate change in Victoria – *Elisa de Wit and Rachael Webb*

It is generally accepted that adaptation will be required to respond to the unavoidable impacts associated with climate change, particularly in coastal areas. Environmental planning law is an important mechanism in implementing this adaptation process. This article considers the initiatives so far undertaken to include coastal climate change-related risks into the Victorian environmental planning law framework with the making of the Victorian Coastal Strategy 2008 and subsequent planning scheme amendment. The way in which coastal climate change issues have been considered by the Victorian Civil and Administrative Tribunal and Planning Panels Victoria is then examined. While progress has been made in Victoria, further work is required to provide coastal planners with the necessary tools to achieve effective statutory and strategic planning and to improve integration between the Planning and Environment Act 1987 (Vic) and the Coastal Management Act 1995 (Vic).

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Participation and responsiveness in merits review of polycentric decisions: A comparison of development assessment appeals – *Andrew Edgar*

The question of whether tribunals operate in an inquisitorial or adversarial manner can be regarded as a starting point for evaluating their processes. It is a question that is also raised in regards to the Land and Environment Court of New South Wales (LEC). This article argues that the merits review jurisdiction of the LEC generally operates according to an adversarial process. This becomes clear when participation and responsiveness in the LEC is compared with the Victorian Civil and Administrative Tribunal's Planning and Environment List, which tends to operate according to inquisitorial processes. Particular risks are identified with both adversarial and inquisitorial processes in the context of merits review of development assessment decisions. It is argued that the problems raised by adversarial processes are more fundamental than those raised by inquisitorial processes.

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From revolution to evolution: Two decades of planning in Queensland
– *Philippa England*

In December 1997, the Queensland government enacted the Integrated Planning Act 1997 (Qld) (IP Act). This comprehensive reform, designed to place Queensland at the “leading edge of planning practice” was replaced, in 2009, by the Sustainable Planning Act 2009 (Qld) (SP Act). The 2009 Act claims to be an evolution not a revolution for Queensland planning practice. This article traces, over the past two decades, the journey from revolution to evolution in Queensland planning law. It explores the background, major premises and some of the enduring critiques of the IP Act. It identifies a clear trend towards greater State intervention in recent years and describes how this trend, in conjunction with the original objectives of integration and enhanced efficiency, are reflected in the new Act

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Reflections on the history and role of the Environment Court in New Zealand
– *Kenneth Palmer*

The Environment Court has its origins in a Planning Appeal Board established in 1953. Its functions were to hear appeals on plans prepared by local authorities, and resource consent matters. The board was constituted as a formal body with a judicial chairperson and two assessors. The board became a Planning Tribunal in 1977. Under the Resource Management Act 1991 (NZ) (RM Act), the tribunal obtained extended jurisdiction to make declarations and determine civil enforcement applications. In 1996, the tribunal was renamed as the Environment Court. This article considers the purpose of the RM Act, evolving jurisdiction of the court, issues affecting public participation, recent procedural innovations, and the court’s contribution to shaping environmental outcomes. The court is staffed by permanent environment judges and environment commissioners. The commissioners have a significant function in promoting mediation between parties to appeals.

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