

ENVIRONMENTAL AND PLANNING LAW JOURNAL

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ARTICLES

Leadership by the courts in achieving sustainability – *Hon Justice Brian J Preston*

The three branches of government – the legislature, executive and judiciary – are partners in the goal of achieving sustainability. Each can play a leadership role, consistent with their functions. The judiciary’s primary leadership role is in the exercise of its central function of judging disputes. This involves finding, interpreting and applying the law. Each step provides opportunities to exhibit leadership in attaining sustainability. The judiciary protects and upholds the rule of law. This includes upholding laws that encourage sustainable development. In this way, courts ensure good governance. The judiciary can facilitate access to justice, including access to environmental justice. Courts can also facilitate access to justice by equitable, efficient and effective court administration. Finally, the judiciary can provide leadership through reasoned decisions in merits review of administrative decisions and conduct, explicating and upholding principles of sustainable development. 321

Water Efficiency Plans: Policy and practice – *Neil Gunningham and Darren Sinclair*

This article examines the use of Water Efficiency Plans to reduce water consumption by industry in multiple Australian jurisdictions. First, it describes their key defining characteristics and implementation challenges across jurisdictions. Secondly, it conducts a preliminary evaluation of their efficacy. Thirdly, and finally, it considers the opportunities and obstacles for achieving greater national policy consistency. 331

Using GATT, Art XX to justify climate change measures in claims under the WTO Agreements – *Christopher Tran*

In a claim brought under the General Agreement on Tariffs and Trade (GATT), World Trade Organization Members can potentially justify climate change measures, otherwise inconsistent with that Agreement, under the exceptions in Art XX. Developments in the interpretation and application of those exceptions have led some commentators to suggest a reconciliation between trade and environmental imperatives. This article explains the “environmental turn” in the Art XX jurisprudence and why a climate change measure will likely pass muster under Art XX. This article then examines the extent to which Art XX can be invoked to justify climate change measures otherwise inconsistent with WTO Agreements other than the GATT. 346

Public participation, environmental law and new governance: Lessons for designing inclusive and representative participatory processes – *Cameron Holley*

New environmental governance (NEG) claims to improve efficacy as well as “deepen democracy” by opening up new points of public participation into many levels and stages of traditional legal process. This article examines a vital, yet divisive, aspect of these new participatory approaches: the challenge of achieving inclusive and representative participation by civil society actors and all pertinent stakeholders. Using research into 12

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| case studies drawn from three leading Australian NEG programs, this article empirically examines inclusion and representation in practice and reveals the substantial difficulties NEG faces in fully satisfying its participatory aspirations. This leads the article to make a number of important empirically-based recommendations for designing more effective participation processes. These recommendations fall under two broad themes: (i) enhancing the capacities of potential participants; and (ii) enhancing the capacity and role of public agencies as facilitators of participation. The analysis also has implications for ongoing theoretical debates regarding the participatory and democratic character of NEG. | 360 |
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BOOK REVIEW

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| <i>Does Environmental Law Work? How to Evaluate the Effectiveness of an Environmental Legal System</i> by C McGrath | 392 |
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