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ARTICLES

Big sticks, carrots and enforceable undertakings under the Environment Protection and Biodiversity Conservation Act 1999 – *Rachel Baird*

The use of enforceable undertakings under the Environment Protection Biodiversity Conservation Act (1999) (Cth) is a relatively new tool for regulators. The first instance of the use of an enforceable undertaking in relation to the breach of a civil penalty provision in Pt 3 of the Act was in August 2008. Since that date, enforceable undertakings have become a key feature in enforcement options for the Commonwealth Department of Environment, Water, Heritage and the Arts (DEWHA) for there have been seven instances of enforceable undertakings being accepted by the federal Minister in the 15 months to August 2010. Similar provisions for enforceable undertakings exist under New South Wales and Victorian legislation. The instances where enforceable undertakings have been accepted by federal and State authorities have not involved significant pollution events or wilful environmental harm. In fact, the circumstances of each case illustrate the types of mistake that should be prevented by the implementation of a robust environmental compliance program. 3

Eligible carbon claims in the voluntary carbon market – *Sophie Chan*

Green issues continue to play an increasingly prominent role in discussions regarding the future regulation of corporate behaviour, including in relation to climate change. While progress towards a price on carbon in Australia has possibly slowed, corporations are still eager to portray themselves as sensitive to environmental issues. One popular means of achieving such an image is for corporations to make "carbon claims", where products are advertised to be low in carbon or carbon neutral. This article examines the interaction of such carbon claims with the competition regulatory framework in Australia, in particular the Trade Practices Act 1974 (Cth). In addition, the article suggests precautions that corporations may take in reducing their carbon footprint and promoting such actions to ensure that their claims will not contravene Australia's competition legislation. 9

Are New South Wales' planning laws climate-change ready? – *Robert Ghanem* and *Kirsty Ruddock*

The national debate regarding Australia's greenhouse gas emissions has until recently been firmly focused on the Carbon Pollution Reduction Scheme (CPRS), federal renewable energy legislation and international negotiations for a post-Kyoto regime. While such action is critical to addressing climate change, it has deflected focus from key legislative measures that could be implemented at a state level to complement federal and international action. Planning laws are one such area. They have the ability to facilitate effective mitigation through increased regulatory standards as well as ensuring adaptation to imminent impacts through proactive measures in local planning regimes. However, an analysis of the New South Wales planning regime – from the strategic planning phase through to post-consent mechanisms – reveals that it is currently not achieving this potential. 17

Environmental civil penalties in Australia: Towards deterrence? – *Brendan Grigg*

This article examines the extent to which environmental civil penalties in Australia are a means to deter contraventions of environment protection laws. It considers five environmental civil penalty cases under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and the role that deterrence plays in determining the civil penalties ordered in those cases. The article then analyses and evaluates the South Australian civil penalty scheme, the first of its kind in Australia. It considers, in particular, its unique features such as the ability for the South Australian Environment Protection Authority (EPA) to negotiate an out-of-court civil penalty and the ability for a person, against whom the South Australian EPA proposes to commence civil penalty proceedings, to elect to be prosecuted for the alleged offence in a criminal court. With these mechanisms the South Australian scheme avoids the criticism often levelled at civil penalty schemes, namely that they compromise fundamental human rights and procedural standards. However, this article concludes that these mechanisms render the scheme completely voluntary and may deprive the scheme entirely of the efficiency benefits that a civil penalty scheme is designed to provide, including the ability to develop this innovative tool as a vehicle for general deterrence with respect to contraventions of environment protection laws. 36

BOOK REVIEW – *Mike Purdue*
Nuclear Law: The Law Applying to Nuclear Installations and Radioactive Substances in its Historic Context by Stephen Tromans 55

Corrigendum

Please note two errors in the article, "The role of the banking industry in facilitating climate change mitigation and the transition to a low-carbon global economy" by Megan Bowman published in Volume 27, Issue 6, p 448:

• Page 448, line 3 of the abstract. This sentence should read "This potential manifests in **three** ways."

• Page 459. The text attached to footnote 94 should read "Indeed, some banks that are leading in clean technology and renewables finance have stated that they will continue to work with fossil fuel and carbon intense **clients** in the immediate term."

The production editor apologises for any inconvenience caused.