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ARTICLES

Legal liability for carbon capture and storage in Australia: Where should the losses fall? – *Dr Nicola Swayne and Angela Phillips*

This article presents a critical analysis of the current and proposed CCS legal frameworks across a number of jurisdictions in Australia in order to examine the legal treatment of the risks of carbon leakage from CCS operations. It does so through an analysis of the statutory obligations and liability rules established under the offshore Commonwealth and Victorian regimes, and onshore Queensland and Victorian legislative frameworks. Exposure draft legislation for CCS laws in Western Australia is also examined. In considering where the losses will fall in the event of leakage, the potential tortious and statutory liabilities of private operators and the State are addressed alongside the operation of statutory protections from liability. The current legal treatment of CCS under the new Australian Carbon Pricing Mechanism is also critiqued. 189

Aboriginal objections to development and mining activities on the grounds of adverse impacts to sites of spiritual significance: Australian judicial and quasi-judicial responses – *Dr Andrew Sneddon*

This article considers the ways in which Australia’s courts and tribunals have responded to Aboriginal objections to proposed mining and development activities on the grounds of potential adverse impacts to “sacred sites”. Over the last 15 years of the mining and housing booms, Australia’s courts and tribunals have expanded the grounds on which Aboriginal objections to such activities will be successful, with significant ramifications for the mining and development industries, legal practitioners, urban planners and heritage professionals. This expansion of the grounds for objection reflects an increased awareness on the part of the judiciary and quasi-judiciary of Aboriginal world views and of the forms that the spiritual values of a site can take, augmented by a more flexible application of general urban planning principles. Importantly, the decisions of Australia’s courts and tribunals have provided legal counsel that act for traditional owners, developers and mining concerns with clear guidance in regards to mounting a case for a successful objection or a defence to such objections. 217

Reefs, recreation and regulation: Addressing tourism pressures at the Ningaloo Coast World Heritage site – *Andrea Bassett*

World Heritage listing is of critical interest to states seeking to draw global attention to their cultural and natural heritage. This attention provides a significant opportunity for tourism development, but can create conflict if economic drivers override best practice heritage management. The World Heritage Convention seeks to balance these tensions by imposing on parties the duty to both protect and present their listed sites. This article explores the inherent conflict of openly presenting sites to the public while also fully protecting their World Heritage values, in the context of ecotourism regulation in the recently listed Ningaloo Coast, Western Australia. Federal and State legislation are analysed, and it is found that regulation of human-wildlife interactions and tour operator

licensing in Ningaloo are crucial for balancing these conflicting duties. Recommendations are made to ensure Australia meets its World Heritage obligations of this unique and pristine site for future generations to enjoy. 239

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