

# ENVIRONMENTAL AND PLANNING LAW JOURNAL

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ARTICLES

**An introduction to the Carbon Farming Initiative: Key principles and concepts**  
– *Andrew Macintosh and Lauren Waugh*

In December 2011, the Australian government introduced a project-based, baseline-and-credit carbon offset certification scheme called the Carbon Farming Initiative (CFI). Its formal objectives are to assist in the achievement of Australia's greenhouse gas mitigation obligations and promote abatement in a manner that will protect the environment and improve resilience to the effects of climate change. Most significantly, the CFI will provide the basis for the generation of certified offsets for use in the Australian carbon pricing scheme (CPS) under the Clean Energy Act 2011 (Cth) (CE Act) and for sale to overseas buyers. It will also certify domestic offsets for use in voluntary markets. This article describes and analyses key aspects of the CFI and sheds light on its relationship with the international greenhouse accounting rules and the CE Act's CPS. It evaluates the effectiveness of the mechanisms that have been put in place to deal with integrity risks and secondary impacts associated with the scheme. It is concluded that the CFI has the capacity to significantly reduce the cost of meeting Australia's mitigation targets and promote more sustainable land-management practices. .... 439

**Out of crooked timber: The consistency of Australia's Illegal Logging Prohibition Bill with the WTO Agreement** – *Andrew D Mitchell and Glyn Ayres*

This article examines whether a proposed measure that would prohibit the importation into Australia of illegally logged timber would be consistent with the WTO Agreement if passed by the Australian Parliament in its current form. The Illegal Logging Prohibition Bill 2011 (Cth) would prohibit the importation of timber harvested in contravention of the laws of its country of origin, including timber in manufactured products such as furniture. Importers would also be required to comply with certain due diligence requirements, such as assessing the risk that their imports contained illegally logged timber. However, by conditioning entry into the Australian market solely on whether timber was harvested legally, the Bill raises clear issues under the WTO Agreement. In particular, the Bill is likely to lead to differential treatment of like products from different countries, contrary to the most-favoured-nation obligations in Art I of the GATT 1994. Moreover, it would contravene Art XI of the GATT 1994 as a restriction on imports could not be justified under any relevant exception. Australia may wish to consider reformulating the Bill to more accurately and effectively target environmentally destructive logging practices and unfair competition. .... 462

**Raising the boardroom temperature? Climate change and shareholder activism in Australia** – *Susan Shearing*

This article considers the extent to which statutory shareholder mechanisms under Australian corporate law can be invoked to promote climate change initiatives by public companies. It provides an overview of the corporate and environmental regulatory and policy framework within which climate shareholder activism emerged in Australia in 2010/2011, and assesses the effectiveness of this approach by reference to four case

studies of companies listed on the S&P/ASX200 index. Reference is made to the American experience of climate change shareholder activism. The article considers whether shareholder activism can be a catalyst for driving action on climate change reform within the Australian corporate sector. .... 479

**Creating the power for renewal: Evaluation of New South Wales’ renewable energy planning law changes and suggestions for further reform – Andrew Newman**

The risk of climate change has created a pressing need for governments to inject large quantities of renewable energy into their energy supply mix. The recently elected New South Wales Liberal-National government has proposed specific renewable energy planning rules as part of a broader reform of planning policy. These reforms stress the importance of public participation in the planning process. This article considers the experience of other jurisdictions and evaluates the proposed reforms in New South Wales on public participation, consideration of strategic issues such as land-use policy, and technical and siting standards for equipment. It then proposes further reform options geared towards improving the prospects for renewable energy development in the State and contribute towards the Commonwealth’s 20% Renewable Energy Target by 2020. .... 498

**Towards standalone Aboriginal heritage legislation in New South Wales: A critical analysis and proposals for an alternative plan – Brett Hayward**

The New South Wales government’s review of Aboriginal heritage legislation provides a timely opportunity to review existing legislative frameworks for the protection of Aboriginal heritage. Ultimately, this review will recommend a model for standalone Aboriginal heritage legislation in New South Wales. The article gives an overview of the current process in New South Wales and Victoria and seeks to provide a critical analysis of each State’s statutory framework. Recommendations are given for alternative heritage protection models that are focussed on Aboriginal self-determination with the addition of accountability and responsibility. .... 515

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