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ARTICLES

Moving from consideration to application: The uptake of principles of ecologically sustainable development in environmental decision-making in New South Wales – *Guy J Dwyer* and *Mark P Taylor*

The achievement of ecologically sustainable development (ESD) is dependent upon appropriate action being taken at all scales of environmental governance to protect the environment. This article outlines a three-step process for achieving ESD at the project or activity scale in New South Wales. It considers the extent to which four environmental statutes in New South Wales adequately facilitate the application of ESD principles by decision-makers when they are deciding whether to approve a proposed project or activity (ie the first part of the three-step process). The article finds that two of the selected statutes do not adequately facilitate the first part of the three-step process because they vest a significant level of discretion in decision-makers with respect to determining if ESD principles are to be applied when making decisions about proposed projects or activities. Accordingly, it is argued that these statutes should be amended to provide for duties obliging decision-makers to apply ESD principles. It is also suggested that the discharge of these duties should be informed by non-binding policy guidelines for applying ESD principles in a given case. 185

Getting the balance right: A renewed need for the public interest test in addressing coastal climate change and sea level rise – *Tayanah O'Donnell* and *Louise Gates*

The law with respect to coastal management in New South Wales, particularly those laws dealing with sea level rise, is a dynamic area that is, once again, currently under review. This article discusses Stage 1 of this reform and analyses it in the broader context of the "public interest" test. The importance of this test for decision-makers, especially those at the local government interface, is highlighted, with particular attention paid to both climate change impacts and recent, relevant judicial decisions. It further explores the tension between private property rights and the public interest test in the context of the coastline, and suggests that a balance may be found in applying innovative planning mechanisms such as rolling easements. 220

Energy efficiency or energy wasted? The record of Australian and Swedish law to improve energy efficiency in the buildings sector – *Joshua Prentice*

Measures to improve energy efficiency have gained significant support in recent years as a cost-effective means to reduce greenhouse gas emissions. Emissions from buildings have risen significantly in recent years and, thus, represent a pivotal focus of regulatory measures to improve energy efficiency. The Building Energy Efficiency Disclosure Act 2010 (Cth) (BEEDA) entered into force on 1 July 2010 and implements mandatory disclosure requirements concerning the energy performance of commercial buildings. The mandatory disclosure regulatory model implemented under the BEEDA closely follows the regulatory approach that has formed the basis of Swedish energy efficiency law in the

buildings sector since 2002. This article analyses the record of Swedish energy efficiency law in the buildings sector as a comparative case study into the likely outcomes and challenges the BEEDA may encounter in its implementation. 236

Evaluating the effectiveness of the Environment Protection and Biodiversity Conservation Act 1999 (Cth): 2008-2012 – *Susan Tridgell*

The effectiveness of Australia's national environmental legislation – the Environment Protection and Biodiversity Conservation Act 1999 (Cth) – in protecting the environment through its environmental impact assessment regime has been a matter of ongoing debate. The administration of the Act has attracted considerable critique in terms of both its cost and its efficacy. This article revisits the debate, looking at the environmental outcomes of 50 referrals between 2008 and 2012. Some limited evidence for positive environmental outcomes is found, but in areas where there have been significant gains, new political proposals now risk eroding them. In addition, the paucity of evidence available illustrates another weakness in the Act's administration: a lack of transparency and accountability. 245

Wild law in Australia: Practice and possibilities – *Claire Williams*

Australian law currently treats the planet's resources, natural environment and non-human animals as property that can be bought, sold and used by humans. There is now vast scientific knowledge as to how ecosystems operate and that the least sophisticated forms of life support the more complex forms. Yet, in practice, the law favours humans above all else. If human beings wish to survive and prosper in the long term, Earth's dynamic systems and all other life must be protected. Legally recognising nature's rights is a practical response to insight provided by Earth system science and ecology. This article examines why Australia should start to incorporate the principles of Wild Law and Earth Jurisprudence into its domestic legal system, and how this process might be achieved. Local examples are used as practical illustrations to show how different aspects of the environment could enjoy rights under a new system of law. The article also investigates whether there are some possibilities for the development of wild law and Earth Jurisprudence already present in Australian law. 259