ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 35, Number 6

November 2018

ARTICLES

The Australian Experience on Environmental Law – *Brian J Preston*

What are the environmental laws of Australia and how and why were they developed? Answering these questions involves analysing the sources of environmental laws in Australia; the structure and content of Australian environmental laws; the judicial institutions that review, uphold and enforce Australian environmental laws and administrative decision-making under them; and the people who have shaped Australia's environmental laws and experience. 637

Should Australia Introduce a Japanese Style Joint Crediting Mechanism? – *Dr Justin Dabner*

The Paris Agreement reinvigorated the use of carbon markets as a response to climate change. In particular, a new measure was proposed to replace the Clean Development Mechanism (CDM) (and Joint Implementation). In this environment Japan's Joint Crediting Mechanism (JCM) takes on renewed interest. Under this mechanism Japanese entities generate carbon credits from projects that reduce foreign emissions. The measure borrows from the CDM but seeks to address its inadequacies. Although Australia's emissions strategy is currently domestically focused cost considerations are likely to lead to a reconsideration. The opportunity for Australia and Australian entities to count (cheaper) emissions reductions in foreign jurisdictions could see a policy of embracing or replicating Japan's JCM. This article concludes that should the Australian government alter its policy in the foreshadowed 2020 review to recognise foreign credits then it could adapt its Emissions Reduction Fund (and safeguard mechanism) to accept JCM credits. Alternatively, it could implement an Australian version of a JCM. 659

A Legislative Pigsty? The New Regime for Assessing and Managing Biodiversity Impacts Associated with State Significant Development in New South Wales – *Guy J Dwyer*

The laws regulating biodiversity in New South Wales have recently been subject to extensive reforms resulting in the introduction of new legislation, including the *Biodiversity Conservation Act 2016* (NSW) and associated subordinate legislation. It is apparent that the prevailing sentiment of relevant stakeholders towards the new laws is one of unhappiness, although the reasons for this vary widely between stakeholders. The purpose of this article is to critically review one particular aspect of the biodiversity law reforms: the new regime for assessing and managing biodiversity impacts associated with State significant development. It is ultimately argued that there is a real risk that the new regime will, in time, prove to be: (1) inefficient to apply and administer; (2) impractical for stakeholders to understand or work with; and (3) incapable of delivering on the objects of both biodiversity conservation and planning legislation. 670

Designing Nature: Protecting the Australian Environment from Synthetic Biology – *Will Richards*

The introduction of new organisms into the environment has been and remains a serious concern for Australia. Cane toads and rabbits are two of many well-known examples of species that have been imported for agricultural and other reasons but have caused significant damage when released into our unique environment. Developments in science are challenging our understanding of what it means for an organism to be "new", with organisms now being genetically altered or even synthetically created. This article examines two regulatory frameworks that are relevant to protecting the Australian environment from new "synthetic" organisms, evaluating their ongoing suitability as scientists continue to push technological boundaries to produce novel organisms that have not been contemplated by regulators. 688

Challenging Decisions: Environmental Non-government Organisations' Use of Judicial Review under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) – *Nicola Silbert*

High profile litigation brought by environmental non-government organisations (ENGOs) has attracted recent attention in Australia. Critics argue these ENGO challenges to environmental decisions amount to "vigilante litigation" or "lawfare". This article examines the benefits and drawbacks of ENGOs using judicial review to challenge decisions under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Through an analysis of previous judicial review proceedings brought by ENGOs, key outcomes from the proceedings are examined. The results indicate that ENGOs were unlikely to succeed at judicial review due to the limited application of grounds of review and lack of merits review. In each instance that an ENGO was successful at judicial review, the decision was reapproved without substantial changes. All ENGOs brought judicial review proceedings in conjunction with a broader campaign which extended beyond the immediate litigation. Outcomes secondary to the judicial review, such as campaigns related to the proceedings, were generally unsuccessful although the broader social and democratic impacts of judicial review are difficult to define. Analysing the use of judicial review by ENGOs serves the dual purpose of improving ENGO use of judicial review while identifying reforms for improved review of environmental decision-making. 714

Environmental Stewardship Duties in Biosecurity: Issues and Challenges – *Paul Martin and Natalie Taylor*

On the basis that it is desirable to consider the risks associated with legal innovations, this article examines the implementation challenges of a landholder duty of care to the environment. This is a recent importation of the duty of care concept into the management of a complex challenge, the control of invasive species. The management of invasive species is an issue of environmental and economic significance where prior laws have been insufficiently effective to meet public policy goals. This article finishes with observations about implementation effectiveness and considers what might be needed to systematically address the implementation risk of duty-based instruments. 743

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