

# LOCAL GOVERNMENT LAW JOURNAL

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### **The Energy Efficiency Opportunities Act 2006 (Cth) and the Commonwealth government's energy policy framework – Robert Murphy and Zoe Grimmond**

The <i>Energy Efficiency Opportunities Act 2006</i> (Cth) (EEOA) forms part of the Commonwealth government's energy policy framework. The government has identified that business energy use accounts for around 80% of Australia's energy consumption. The EEOA has been developed to require large users of energy to conduct self assessments encourage those users to implement cost effective energy efficiency opportunities. Encouraging improved energy efficiency by large users is an attempt to ensure secure and environmentally sustainable energy supply to 2030, benefiting both the economy and the environment. The EEOA sets up an assessment and reporting regime for major energy users falling under the scheme, but does not however, impose any obligations that require entities to alter energy usage. The Commonwealth government has appropriated \$16.88 million over five years (from the 2004-2005 financial year) to introduce the scheme established by the EEOA. ....	149
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### **Development assessment and decision-making in South Australia – Recent curtailment of the role of local councils – Paul Leadbeter**

Local councils have played an important role in the assessment of applications for development approval in South Australia since the commencement of planning controls in 1967. Recent changes to the <i>Development Act 1993</i> (SA) have removed the ability of councils to be involved in assessment and decision-making on all development applications. Instead, councils must delegate their function as a decision-making authority under that legislation to either a Council Development Assessment Panel, a Council Officer, or a Regional Development Assessment Panel. The changes remove from the elected members of local councils a role which they have exercised and enjoyed for many years. This article describes the nature and breadth of those changes and makes some observations on the practical implementation of those changes. ....	155
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**The Anisminic doctrine of extended jurisdictional error in New South Wales superior courts – Ian Ellis-Jones**

In Australia, despite some intermittent enthusiasm for the Anisminic doctrine of “extended jurisdictional error”, most Australian superior courts continue to maintain, or at least pay lip-service to, a distinction between jurisdictional and non-jurisdictional errors of law. This has been particularly the case in New South Wales where, even since the landmark High Court of Australia case of *Craig v South Australia*, the State’s two superior courts, the Supreme Court (together with the Court of Appeal) and the Land and Environment Court, respectively, generally decide matters before them involving jurisdictional error using the traditional doctrine of jurisdictional error, notwithstanding that *Craig* is increasingly, and at times incongruously, cited as authority for their conclusions. Also, despite some judicial authority that would not appear to take into account the qualifications and reservations expressed in *Craig*, the preponderance of New South Wales judicial authority makes it clear that not all *Anisminic*-type errors of law will be jurisdictional in the broad or extended sense but only one on which the decision of the case depends. This would be so, eg in the case of a failure to take into account a relevant consideration that the decision-maker was duty bound to take into account, where compliance with the requirement was a precondition of the existence of the power to make the decision. In the case of an erroneous finding, the erroneous finding would need to form the basis of the decision or otherwise be an element in the process of reasoning that led to the decision for the error to be jurisdictional in the *Anisminic* sense. ....

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**Challenges in an age of consent: Post decision monitoring of planning conditions in New South Wales – Robert G Stokes**

The contemporary New South Wales land use planning system was conceived in the 1970s. After prolonged discussions with the community and in Parliament, the *Environmental Planning & Assessment Act 1979* (NSW) (EPAA) commenced in 1980, and provides an integrated system for environmental assessment and development control. One of the objects of the EPAA is to encourage “the promotion and co-ordination of the orderly and economic use and development of land”. An orderly process of development is established under Pt 4 of the Act. This article proposes to examine the effectiveness of the system for monitoring and enforcing the conditions placed on such development. The first part of the article will examine what is meant by “development”, how development is regulated by the imposition of conditions, and how development is monitored by local government and other regulators. The article will then examine the ways in which development control can be enforced, and how breaches of development controls may be prosecuted, including an analysis of some recent cases. The article will conclude by examining some of the difficulties with enforcing conditions of development consent, and will present some options for reform. ....

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