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ARTICLES

Joint Crediting Mechanism in Practice – *Dr Justin Dabner*

The Japanese government has developed the Joint Crediting Mechanism (JCM) in response to the inadequacies of the Kyoto Protocol’s Clean Development Mechanism. In a previous article in this journal the author outlined the features of the JCM. This article draws on interviews with officials, consultants and corporations to assess the practical application of the JCM. It concludes that, to best achieve its environmental mandate, JCM offset credits need to be of value. Furthermore, the JCM’s diplomatic and commercial objectives are substantially achieved by the complementary funding program for JCM projects. Better alinement of the two programs could enhance their environmental effectiveness. The introduction of an emissions trading scheme in Australia (or extension of the Safeguard Mechanism) would likely provide a market for carbon offsets. Given that the current Australian offset scheme is solely domestic focused a case could be made to also introduce, at that time, a JCM type scheme that awarded offset credits to Australian entities engaged in foreign joint ventures achieving low-cost emissions reductions. 295

Remediating Public Interest Environmental Harm: Revisiting the Montara and Deepwater Horizon Oil Spills and the Need for Legislative Reform in Australia – *Edward Dymond*

Public interest environmental harm concerns damage to the environment that affects the public interest in use and non-use value terms. By revisiting the differing approaches taken by Australia and the United States following the Montara and Deepwater Horizon oil spills, this article suggests that Australia currently has inadequate provision for addressing such harm. Greater accountability through a legal mechanism that specifically provides recompense to the damage done to the environment itself is one solution that demonstrates that the loss of environmental integrity is no longer an acceptable practice. The forthcoming 10-year review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) in 2019 provides an opportunity to rethink how public interest environmental harm should be addressed in Australia with legislative amendment one viable option of reform. 306

Regulation of electronic waste under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal – *Michael Goodall*

This article describes the regulation of electronic waste (e-waste) under the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal (the Basel Convention). It provides a general description of e-waste and the hazards it may pose to the environment and human health, and a summary of the relevant parts of the Basel Convention, decisions made at the Conference of Parties and activities of the Expert Working Group concerning e-waste and its management. It provides case studies in China and Australia for insights into how e-waste is managed. Generally it finds there is

an inequity in the global distribution of e-waste and its hazards, with waste tending to flow from developed to less developed countries. However, it also finds that relatively recent policy developments in China may signal a change in this dynamic and force Australia, and other countries, to develop new solutions to manage their e-waste. 322

Regulating Wild Collected Orchids? The CBD, Nagoya Protocol and CITES Overlaps – Charles Lawson, Jenna Wraith and Catherine Pickering

The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) permit and certification ensures that international trade in listed endangered species, including orchids, is sustainable, legal and traceable. The Convention on Biodiversity (CBD) and its subsequent Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity (Nagoya Protocol) promotes conservation and sustainable development of all genetic resources with an access and benefit-sharing permit and contract system. This article reviews these schemes applied to wild collected orchids and makes the argument that the Nagoya Protocol's checkpoints and international certificates of compliance establishing the resource origin/legal provenance overcomes some of the limitations of CITES. This will require more States to implement the Nagoya Protocol and CITES and CBD to properly address their co-operation, co-ordination and synergies to avoid perverse outcomes from fragmented regulation. 339

Rehabilitation of Abandoned Fracking Operations: A Comparative Study on the Effectiveness of Levy Schemes in Meeting the Polluter Pays Principle – Tania Murray, Edward Andre and Krishna Prasad

This article critically reviews Alberta's Orphan Fund Levy and Western Australia's Mining Rehabilitation Fund as possible models of financial assurance to be applied to unconventional gas developments in Australia, to support governments to better manage the environmental risks associated with abandoned sites. The article finds that levy schemes have strengths in shifting the financial burden for long-term environmental liabilities to industry, consistent with the polluter pays principle, which are absent in other forms of financial assurance. The article outlines additional assurance mechanisms that could be put in place by governments in conjunction with levy schemes for financially riskier projects or projects with a high social impact. 362

Shipping Companies' Accountability in Ballast Water-induced Pollution Regulation – Mia Mahmudur Rahim, Md Tarikul Islam and Sanjaya Kuruppu

Recently there has been exponential growth in global shipping and trade. This increase requires prompt action to reduce environmental pollution and damage to biodiversity caused by ballast water discharge. However, there is currently no international instrument available to hold the global shipping corporations accountable for their vessels' performance in ballast water-caused pollution reduction. This article critically assesses the current accountability practices of the top 20 global shipping corporations and finds that they rarely disclose information on their vessels' performance in ballast water regulation. A novel interdisciplinary framework for improving the accountability of shipping corporations using external disclosure as a Market Based Mechanism is furnished. 376

Our Home Is Girt by Seawalls? Preserving the Public Interest in an Era of Sea Level Rise – Mr Ashley Robb, Michele Payne, Dr Laura Stocker and Dr Garry Middle

In this article we interview planners from local government authorities in Western Australia who are responsible for preparing coastal communities for the likely effects of sea level rise, to identify the preferences of these planners regarding the regulation

of new coastal protection structures. We then examine how these preferences are likely to influence the achievement of the State coastal policy's public interest objectives. The article demonstrates that these planners have a clear preference against the long-term stabilisation of shorelines using hard structures, which aligns with the preferences outlined in the State policy. However, paradoxically, the current legislative and funding framework tends to encourage the continued adoption of protection measures to stabilise existing shoreline positions in order to maintain public beach amenity. In an era of sea level rise, this approach is likely to become increasingly unviable and undermine the achievement of State objectives. Recommendations are provided to help Western Australia achieve its public interest objectives. 395

