

# ENVIRONMENTAL AND PLANNING LAW JOURNAL

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## ARTICLES

### **Impacts on Agricultural Land from Queensland’s Energy Transition – *Dr Georgina Davis***

The development of large-scale solar photovoltaic facilities across Queensland is supported by the State Government’s commitment to a 50% renewable energy target by 2030. These facilities are currently assessed in Queensland under individual local planning schemes, unlike other large-scale resource and energy generation activities which are rigorously assessed at State level. Much of the siting and development of large-scale solar facilities have occurred in regional Queensland. Small local governments lack adequate resourcing for the consistent assessment and conditioning (development approvals) of these facilities, despite the considerable land-footprint and infrastructure requirements. To date, over 10,000 ha of high-quality agricultural land (including irrigated land) has been developed by large-scale solar facilities. Some of the facilities have impacted the neighbouring properties “right to farm” and undermined the viability of regionally located agri-infrastructure. This article outlines the issues and the future objectives required to mitigate the impacts of siting large-scale solar on high-quality agricultural land and achieve coexistence for these projects in agricultural communities. .... 587

### **China: A Global Renewable Energy Fulcrum? – *Jan Froestad and Tabitha M Benney***

With its induction into the global economy, China became the manufacturing warehouse of the world – a world based on fossil fuels. Since 2005, China has also managed to establish itself as a world leader in renewable energy. How has such a divergent path produced such seemingly positive results? This article explores China’s modern energy policies as a basis for a national green energy transition. In this case, China has leveraged its unique position as both a developing country and an economic trade giant to radically promote its renewables industries, fund massive infrastructure projects, and incentivise green development and industries. Yet this has not led to radical decarbonisation at home or abroad. We consider the prospects of China as a global green energy fulcrum and find the outcome of this battle remains difficult to predict. If China succeeds in building the broad transformative alliance required, it has great potential. We conclude, however, that the weight of the evidence is somewhat dubious in this case unless China finds its intention leads to action. .... 605

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### **Mercury Emissions, Regulation and Governance of Coal-fired Power Stations in Victoria, Australia – *Darren Sinclair and Larissa Schneider***

This article reveals preliminary data on mercury emissions from coal-fired power stations in the Latrobe Valley, Victoria. It discusses these findings in the context of existing state-based

regulation, the National Pollutant Inventory and the new international environmental treaty, namely the Minamata Convention on Mercury, and considers the implications for future regulation and governance. .... 630

**The Global Pact for the Environment: Implications for Climate Change Loss and Damage** – *Angela Bruckner*

Loss and damage due to climate change is a controversial and difficult topic in international climate negotiations, with a number of significant challenges yet to be resolved in relation to recognition, attribution, liability, and compensation. Separately, negotiations have commenced on the draft Global Pact for the Environment, which seeks to enshrine environmental soft law principles into a legally binding agreement between States. This article considers the implications of the draft Pact in progressing the challenges of loss and damage, and finds that the draft Pact has the potential to influence State negotiating positions on loss and damage, as well as supporting judicial interpretation and enforcement in climate change-related cases. .... 642

**Clearing of Native Vegetation in Queensland: An Analysis of Finalised Prosecutions over a 10-Year Period (2007–2018)** – *Dr Evan Hamman*

In addition to feral pests and climate change, land clearing has been one of the biggest drivers of biodiversity loss in Australia. Historically, the State of Queensland has led the nation in terms of rates of clearing and the resultant species loss. In the 1990s, laws restricting clearing on both freehold and leasehold land were introduced by the State government. The approach has been controversial, to say the least, and the legal framework continues to be amended on an almost annual basis. This article presents an analysis of finalised prosecutions brought by the regulator over a 10-year period (2007–2018). The results indicate that while the total amount of fines have been steadily increasing, the numbers of prosecutions since 2013 have dropped remarkably. .... 658

**Horses, Culture and Ethics: Wildlife Regulation in Kosciuszko National Park** – *Sophie Riley*

Wildlife management frequently involves complex layers of conservation, protection and killing of animals, which balance ecological necessity against ethical and socio-cultural considerations. Using a case study approach, this article evaluates the NSW government’s decision to reverse a planned cull of wild horses, on the basis of cultural reasons, and the controversy that has since followed that decision. The discussion assesses how decision-makers address challenges in reconciling differing stakeholder perspectives, arguing that a singular focus on cultural values is flawed. In Kosciuszko National Park, this approach side-steps the tension between environmental protection and animal ethics, avoiding an important part of the regulatory debate. The experience of the United States, where wild horses and burros have been protected for their cultural value since 1971, indicates that decision-makers need to be vigilant when engaging with stakeholders, especially in the use of lethal measures. In the latter case, regulators need to be creative, not only incorporating stakeholder engagement, but also allocating sufficient funding to advance research and investment in technologies that provide alternative choices to killing. .... 674

**Aeroconservation – Challenges for Law and Policy** – *Pip Wallace and Jennifer Holman*

Airspace conservation (aeroconservation) is a relative latecomer to ecosystem management, despite intensifying threats to birds, bats and invertebrates in the habitat. This article demonstrates the geographies of threats and examines gaps in law and policy responses. Commonly treated at law, and in fact, as an extension of terrestrial or marine spaces, recognition of air as habitat and related conservation protection is

rare. In addition, management is confounded by the dynamic, three-dimensional and indivisible nature of airspace, by wildlife and aircraft mobility, and by temporal features. Regulation of airspace and patterns of spatial activity are dominated by aircraft traffic control and related transport imperatives to the exclusion of wildlife protection. Where strategic planning mechanisms are applied, they are often tied to amorphous definitions of habitat, rely upon terrestrial habitat protection for their expression or are reflected as two-dimensional notations on a map. Recommendations to enhance protection for co-existence include transforming the approach to airspace and adopting integrated, strategic and three-dimensional approaches. .... 692

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