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ARTICLES

Finding a sustainable outcome for the Murray-Darling Basin Plan: An alternative pathway for resolving State water rights and extraction of water – Dr Edward Christie

Concern over the ecological health of the Murray-Darling Basin river system has been a major environmental problem in Australia. Conflict has persisted over the extent of water extracted from the four Basin States: Queensland, New South Wales, Victoria and South Australia. Under the *Water Act 2007* (Cth), the Murray-Darling Basin Authority is charged with developing a Basin Plan for the future use of the Basin's water resources. This article describes an alternative pathway to that of the Authority for determining a sustainable outcome for the final Basin Plan. The pathway is one of cross-disciplinary collaboration – law, science and effective participatory approaches – and the use of this knowledge. It is based on established principles for community consultation and the assessment, management and resolution of environmental conflicts. Knowledge power of legal rights is the foundation for influencing power relationships between the Commonwealth and the Basin States to resolve this environmental conflict. The potential risk of litigation under the *Water Act*, or the *Constitution*, can act as a trigger for the Commonwealth to consider sharing its power with the Basin States to negotiate a sustainable outcome for the final Basin Plan. The advantages of this pathway are discussed.

Landholders in each Basin State, such as Queensland, will have new obligations imposed on them by water resource plans that will be made under the final Basin Plan. There will be implications for conveyancing (water rights) as well for land management in river catchments (compliance with State environmental legislation). The recent 2010-2011 summer floods in southeast Australia have created an opportunity to find a sustainable outcome for the future management of the Murray-Darling Basin rivers. A sustainable outcome would prevent the past history of environmental problems in the Basin from being repeated. 82

Banning the Bikies: Queensland’s Criminal Organisation Act 2009 – *Andreas Schloenhardt*

Following similar developments in South Australia and New South Wales, the Queensland Government introduced the *Criminal Organisations Bill 2009* which seeks to prevent and disrupt the existence and operation of outlaw motorcycle gangs in this State. This article examines the rationale, scope, and application of Queensland’s *Criminal Organisation Act 2009*, in its own right and also in light of the High Court’s decision in *State of South Australia v Totani* (2010) 85 ALJR 19; [2010] HCA 39. It is argued that Queensland’s law is better balanced than similar laws elsewhere but that it will fail to reduce organised crime in the medium and long term. 100

All blown out of proportion? Contracting and proportionate liability in Queensland – *Ashley Jones*

Does the prohibition on “contracting out” of the proportionate liability provisions in the *Civil Liability Act 2003* (Qld) prevent parties to a contract agreeing allocation of risk in the event of a third party claim? The issue is yet to be determined by a court, but close analysis of the legislation suggests contractual allocation of risk remains available and is at the very least relevant to apportionment. 114

Equitable remedies for elder financial abuse in inter vivos transactions – *Tina Cockburn and Barbara Hamilton*

Elder law is a growing area of legal practice due to the increasing numbers and proportions of older people in Australian society. The older generation has greater access to financial resources by way of retirement capital than ever before. Coupled with the current generation’s high level of debt and an increasing dependence on inheritances to meet these debts, this has created an environment in which the potential for elder financial abuse is increasing. This article examines how equitable remedies can be used as an avenue of redress for elder financial abuse. The effectiveness of these remedies, and in particular the prospect of a costs order being awarded against the perpetrator of the abuse in successful claims, may act as a deterrent and assist in preventing elder financial abuse from occurring. 123

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