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ARTICLES

Corporations and Climate Change: An Investigation of Mandatory Climate Risk Disclosure in Australia – *Zoe Caldwell*

While corporations aggravate the growing climate crisis, climate change in turn poses equal threat to corporations. By physical impacts on assets and operations, and the implications of transitioning to a low-carbon economy, climate risk is both environmental and financial. Mandatory climate risk disclosure in financial reporting is one proposed strategy to mitigate financial climate risk and additionally, lessen corporate climate impact. In Australia, disclosure rules under the *Corporations Act 2001* (Cth) (the Act) do not explicitly require reference to climate risk. In light of recent ASIC guidance suggesting climate risk disclosure may be mandated under s 299A(1)(c), this article investigates Australian companies' climate risk disclosure obligations and their legal enforceability. The analysis reveals existing mandatory disclosure requirements for climate-related governance and risk management practices, and notwithstanding a lack of legal precedent enforcing climate risk disclosure obligations, shows compliance may indeed be legally enforceable under the Act. 3

Victorian Ecological Sustainable Forest Management: Part VI – Identifying Change Mechanisms in Regulation and a New Model for Victorian Forestry Practice – *Dr Rhett Martin*

Forestry regulation in Victoria makes reference to principles of ecological sustainable development in the Sustainable Forests (Timber) Act 2004 (Vic), although this is absent in relation to private forestry. In public forestry decision-makers are to have regard to these principles in undertaking duties under the Act. In practice these principles are practically meaningless in terms of practical application under this regulation. What is missing is an application methodology addressing risk assessment, trigger points for application of principles of ecological sustainable development, and adaptive response mechanisms that utilise information feedback loops at critical stages of decision-making, especially in operational harvesting. This article examines the importance of identifying change mechanisms in regulation addressing sustainability objectives, and explains a new unified regulatory model for Victorian public and private forestry. 18

Identifying Opportunities for Climate Litigation: A Transnational Claim by Customary Landowners in Papua New Guinea against Australia's Largest Climate Polluter – *Dr Chris McGrath*

Existing laws in many jurisdictions provide opportunities for climate litigation in the context of the extensive harm climate change is causing and will cause in the future. This article examines 10 key questions for identifying opportunities for climate litigation and applies them to a case study of potential transnational litigation by customary landowners in Papua New Guinea (PNG) against the company that operates the largest, single source of greenhouse gas emissions in Australia, the Loy Yang A Power Station in Victoria.

Remarkably, at current rates the emissions from this single company are double PNG's entire direct annual national emissions and cumulatively equate to a century of PNG's emissions. The PNG legal system offers remarkable scope for claims against such large overseas polluters. Transnational litigation such as this is a relatively new frontier for climate litigation. The real prospect of liability for transnational climate damages has enormous implications for Australia, PNG and the global climate regime. 42

Litigating at the Source: Attributing Climate Change Impacts to Coal Mines – *Kierra Parker*

Causation poses a fundamental obstacle in climate change litigation. The effects of climate change are caused cumulatively by countless global sources over long periods of time. Sources of greenhouse gas emissions may be direct or indirect. This creates difficulties when seeking to attribute the adverse impacts of climate change to a specific State, actor or project. Overcoming this challenge is no longer as insurmountable as it once was. This article analyses the attribution of climate change impacts caused by burning coal obtained from coal mines in Australian environmental litigation. A turning point has been reached in establishing this link. This is of vital importance to litigants seeking to prevent future extraction of fossil fuels. 67

Coal and Climate Change: A Study of Contemporary Climate Litigation in Australia – *Victoria McGinness and Murray Raff*

Climate change is the most serious and most pervasive risk faced by the natural world and by global human society. The Australian continent is one of the most vulnerable to the impacts of climate change; however, effective national political responses appear to be compromised at every turn. Concerned groups and individuals are unsurprisingly seeking environmental justice in courts and tribunals, and litigation has challenged some of the largest coal developments in Australia. This article examines challenges in the Commonwealth, New South Wales and Queensland jurisdictions by means of merits review and judicial review against coal mining project proposals in order to evaluate the approaches taken by tribunals and courts to the environmental assessment of coal projects. The recent decision of the New South Wales Land and Environment Court in Gloucester Resources Ltd v Minister for Planning has set rigorous new standards for assessment and approval processes with respect to coal projects. To this point decision-makers have taken conservative views of their powers to go beyond the immediate objective of the mining tenure or authorisation being sought, and have accepted the market substitution argument that if we do not mine the coal then someone, somewhere will and we will be no better off. On the other side, some courts have offered leadership in the development of progressive methodologies, such as a broader "public interest" test that embraces climate change issues, of which the Gloucester decision has been the high point. 87

Coastal Management and Protecting the Public Interest: Recent NSW Land and Environment Court Decisions – *Ballanda Sack, Timothy Allen and Bruce Thom*

Impacts of coastal erosion bring into conflict public rights to enjoy Australia's beaches and the personal interests of those endeavouring to protect private property. Coastal protective structures can serve to protect land and property, but potentially at the cost of adversely impacting on beach use and coastal processes. In New South Wales (NSW), s 27 of the Coastal Management Act 2016 (NSW) (and previously s 55M of the Coastal Protection Act 1979 (NSW)), seeks to thread a path between these two often competing interests. It identifies assessment criteria where the public interest could be affected by the construction of coastal protection structures. In so doing, it prioritises the rights of the public consistently with the internationally recognised principles of the "Public Trust Doctrine". In 2018, the NSW Land and Environment Court for the first time considered the application of s 55M, affirming the key role of s 55M in protecting the public's right to use and occupy public beaches. 128