

# ENVIRONMENTAL AND PLANNING LAW JOURNAL

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## ARTICLES

### **Contemporary Issues in Environmental Impact Assessment** – *Brian J Preston*

Environmental impact assessment (EIA) developed in the latter half of the 20th century as a response to growing concern about the impacts of human development on the environment and a recognition of the inadequacy of existing approaches to environmental management. Once an uncertain and new area, it is now ubiquitous in the approval process for projects across the world. It is trite law to say that the impacts of proposed activities should be considered in the process to determine whether the proposed activities should be permitted. However, EIA is often understood broadly and leaves many issues unresolved. What is an impact of development? How far removed (how indirect) can the impacts be that an EIA can consider? What about the cumulative impacts of similar projects? When can these be taken into account? This article identifies three contemporary issues in EIA, assessed in the context of climate change: the scope of EIA, cumulative impacts and temporal problems. .... 423

### **Improving Resilience: Electricity Law, Microgrids and Solar in the Context of Climate Change** – *Thomas Duck*

Australia's electricity system is vulnerable to extreme weather, bushfires and other climate change-induced shocks. There has, however, been a failure to adequately integrate the concept of resilience into electricity law and planning. This article argues that in the face of rapid technological and environmental change, neglect of such integration impedes the development of renewable energy systems, specifically microgrids, that could improve the resilience of the electricity system and of communities. This article examines laws surrounding solar and microgrids in Australia, with focus given to Victoria and to urban areas. Climate change legislation and disaster planning documents are also considered through the lens of resilience and in light of the electricity system's role in supporting community resilience and adaptation. Drawing on examples from overseas, the article concludes with recommendations for legislative reform to help reshape the grid in ways that strengthen community resilience and adaptation. .... 443

### **Roadmaps and Regulation: Sustainable Finance in Australia** – *Neil Gunningham*

Designing effective climate finance regulation (reshaping of the financial system to accelerate low-carbon investment) is complex. This article argues that the most acceptable mechanisms: the provision of greater climate change information and improved climate risk management and disclosure, do not go far enough and will prove insufficient to accelerate the transition to low-carbon finance. The imposition of Risk Weightings and Capital Requirements, various initiatives by the Reserve Bank and mechanisms targeted at changing corporate culture and addressing short-termism, will also be helpful. So too will measures that increase awareness of senior corporate decision-makers that their fiduciary duty extends to considering the impacts of climate change on their business. The

broader challenge is political. Those regulatory mechanisms that might be capable of most effectively intervening in the market are also those that are most threatening to powerful vested interests, including the fossil fuel industry. .... 459

**Protecting Coastal Wetland Habitat for Migratory Shorebirds: Is Australian Law Doing Enough?** – *Evan Hamman, Revel Pointon and Jemma Purandare*

Every year, thousands of migratory shorebirds arrive in Australia from places as far north as China, Japan, Russia and Alaska. The survival of these birds rests upon the co-operation of multiple nations along the East Asian Australasian Flyway (EAAF). Australia is a key nation along the EAAF, providing overwintering refuge for shorebirds before their return to the northern hemisphere to breed. In recent years, the sharp decline of migratory shorebirds along the EAAF has shocked conservationists. Migratory shorebirds like the Far Eastern Curlew are now one of the most endangered birds on the planet. Most of the losses appear to be a result of coastal wetland reclamation in China’s Yellow Sea, but what of Australia’s role in the declines? Are our laws good enough? This article asks what Australia is doing through its domestic legislative efforts to ensure migratory shorebird conservation along the EAAF. To narrow the discussion, it evaluates the legal arrangements for shorebird protection through a study of Queensland’s Moreton Bay wetlands. .... 477

**Green Lawfare: Does the Evidence Match the Allegations? – An Empirical Evaluation of Public Interest Litigation under the EPBC Act from 2009 to 2019** – *Annika Reynolds, Andrew Ray and Shelby O’Connor*

The alleged rise of tactical litigation by public interest groups challenging decisions made under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (*EPBC Act*) has been used to justify calls by government and interest groups to repeal the extended standing provisions contained in the Act. These calls, however, have not been supported by empirical analysis to date. This article builds on existing research to determine whether tactical lawfare is being used to disrupt and delay development projects in Australia. It concludes that there is no evidence of lawfare by environmental groups, and that reducing the wider standing afforded under the *EPBC Act* is not justified by the objectives of the Act, or key international environmental agreements. .... 497

**Should CRISPR/Cas9 Technology Be Regulated under the Gene Technology Act 2000 (Cth)?** – *Ella Scoles*

The recent Gene Technology Amendment (2019 Measures No 1) Regulations 2019 (Cth) addresses some aspects of Clustered Regularly Interspaced Short Palindromic Repeats (CRISPR)/CRISPR-associated endonuclease protein (Cas9) technology within the genetically modified organism (GMO) definitions in the *Gene Technology Act 2000* (Cth). This article reviews the consultations for these regulations and examines whether these new amendments retain the policy imperatives of public trust and legitimacy justifying the original regulation, so that consumers can be sure GMOs are independently assessed by the Gene Technology Regulator to be healthy and safe for humans and the environment. The article concludes that it is now time to revisit and re-examine the public policy justifying Australia’s GMO regulatory scheme because the original justification for regulation appears to have diminished. .... 517