

ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 39, Number 5

2023

ARTICLES

Indigenous People and Carbon Rights: Review of Australian and New Zealand Carbon Markets – *Pip Abbott*

This article undertakes a comparative review of Indigenous people and their involvement in carbon markets through a critical analysis of the current emissions trading schemes in Australia and New Zealand. The review of these schemes draws on a preliminary discussion in Part I of (1) offsetting schemes around the world; (2) different approaches to legal interests in carbon; and (3) international law in respect of Indigenous people and environmental management. From this preliminary discussion, the schemes currently in place in Australia and New Zealand are reviewed with consideration to the inclusion of Indigenous people within these schemes. The article discusses the different legislative and policy approaches adopted by the respective national governments. The preliminary discussion and subsequent review demonstrates that each country needs to do more to involve Indigenous people within their respective schemes, and that failing to do so could be considered a breach of their commitments in regards to the environment and the rights of Indigenous people. 381

NSW Flood Planning: How Much Risk Can We Tolerate? – *Samantha Murphy*

This article explores the differences in how government decision-makers assess the level of flood risk considered “tolerable” when administering New South Wales (NSW) planning laws and how insurers assess risk under a home insurance policy. Building upon the recommendations of the 2022 NSW Flood Inquiry, it argues that land-use planning decisions should incorporate consideration of insurers’ risk assessments, so that the level of risk considered “tolerable” by government more closely reflects the level of risk which is tolerable to insurers. Amendments to the NSW planning system are suggested, which aim to bridge the gap between these differing assessments, promoting more sustainable communities and long-term insurance affordability in New South Wales. 402

“Getting on with the Job”: Legislative Reforms for Western Australia to Meet International Climate Change Commitments – *Kaylee Prince*

Despite continued political discussions, media coverage and public conversation, Australia’s commitment to reducing Greenhouse Gas emissions (GHGe) has been far from legally proactive to meet our Paris Agreement targets. With the newly elected Commonwealth Government promising swift action on climate change, an analysis of the current climate change legal and policy framework and opportunities for reform is warranted. Such analysis reveals that both Australia and Western Australia lack sufficient legislative frameworks to ensure GHGe are effectively reduced. This article proposes reform opportunities at both levels of government; specifically, the establishment of legislated national and state carbon budgets. The legislated target and carbon budget at the State level and the State regulation

of GHGe as pollution, could set Western Australia and Australia on the pathway to meeting its Paris Agreement commitments. 421

Adapting Conservation Covenants to Indigenous-owned Land – *Sarah Brugler and Benjamin J Richardson*

This article examines the role of conservation covenants in achieving biodiversity conservation on private property owned by First Nations in Australia. The application of conservation covenants to land held by First Nations has yet to be closely researched, and our article examines through case studies, the specific legal and governance issues that arise in this context and pathways to improve governance. This research has relevance to Australia’s new commitment to increased protected area targets and the nation-wide momentum to reset the relationship between First Nations and non-Indigenous Australians, which is delivering emerging opportunities for First Nations’ involvement in biodiversity governance. The article demonstrates that conservation covenants are becoming more relevant to First Nations but they potentially require some legal customisation to suit the needs of First Nations landowners. 435

The Law Fails to Reflect and Support the Dingo’s Cultural Significance – *Rebecca Hoare and Juliette King*

The dingo has a deeply significant role in Australian Aboriginal culture. Indigenous peoples have internationally recognised rights to maintain and strengthen their distinctive spiritual relationship with their traditional lands and other resources, and to the conservation and protection of the environment, for example, but it is up to state actors to enshrine these rights in law. With this in mind, and with a particular focus on Queensland, we examine whether the contemporary legal framework for the conservation and management of dingoes reflects and supports the animal’s special importance to Indigenous Australians. We find that it certainly does not. 450