

# ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 40, Number 4

2024

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## ARTICLES

### **Shipping More Than Sunshine: Water Planning for Hydrogen Production in Queensland Australia** – *Jacqui Robertson*

The phrase “shipping sunshine” has been used to describe a new export industry involving hydrogen in Australia, reflecting on the widely available solar assets that the country possesses. Notwithstanding this sentiment, the success of any hydrogen industry hinges on the availability of water as a crucial resource. Thus, it is not only solar energy that is being harnessed in this proposed new industry but also our precious water resources. This article highlights the importance of sustainable water resources to any proposed hydrogen industry and aims to ensure that development of the industry does not have unintended consequences for water in Queensland, Australia. The analysis reveals that further investigations of water supply management initiatives are imperative for the Hydrogen Hubs of Gladstone and Townsville. This research has wider implications for understanding the water energy nexus in addressing climate change. .... 214

### **Ministerial Negligence: Realising Its Fleeting Utility in Environmental Law through the EPBC Act** – *Arden Yeh*

The law of negligence is a relatively recent addition to the arsenal of legal routes of the fourth-generation environmental law. It aims to hold the Commonwealth Minister for the Environment accountable for want of reasonable care in the prevention of global climate change. The case of *Urgenda Foundation v State of Netherlands (Urgenda)* marked the inception of this creative use of torts in securing environmental outcomes. However, the domestic application of *Urgenda* was curbed in *Minister for the Environment v Sharma*, where the Federal Court of Australia overturned the imposition of novel duty and finding of the Minister’s negligence at first instance. Borrowing from the public law concept of *Wednesbury* unreasonableness, this article interrogates the Court’s reasoning in framing a negligence claim against the Minister’s exercise of decision-making power under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act)* as non-justiciable. Delving into the history and application of the the law of negligence, its remedial capacity of injunctive relief and its normative function, the article explores how the law of negligence remains a promising mechanism to safeguard environmental concerns through executive accountability under the *EPBC Act*. The pressing necessity of realising the potential of tort law in this context is highlighted through the Minister’s exercise of decision-making power as an unfettered discretion, as well as the fleeting utility of the negligence law due to increased difficulties in establishing causation. .... 244

**Unto the Breach: The Application of Vicarious Liability to Environmental Crimes –**  
*Adrian Hizo*

While much has been written about the doctrine of vicarious liability in the context of tort law, the same cannot be said for the application of the doctrine to environmental crimes. This article examines the rationale for adopting the doctrine of vicarious liability from the law of torts to the prosecution of environmental offences in New South Wales. The article analyses the nature of environmental offences, in particular, those characterised as strict liability offences, and contrasts the development of vicarious liability in this area to that of corporate criminal liability. The theoretical debates which have been well developed in the law of torts are also examined and applied in an attempt to find the underlying policy basis for the use of the doctrine in a different context. The article ultimately posits that it is not useful to attempt to discern only one reason for the imposition of vicarious liability, and that having multiple rationales enriches the law. .... 263